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SOME FISCAL ASPECTS OF USING PUBLIC WORKS AS AN AID IN MAINTAINING BUSINESS EQUILIBRIUM

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The sanity of the position recently taken by the President's Committee on Unemployment in regard to the proper use of public works in a comprehensive plan for alleviating unemployment is gratifying. The report of the Committee points out that undue reliance on public construction is futile as a fundamental remedy or complete counter-balance to careless excesses on the part of business. The Committee, however, recognized that whatever the cause, the depressing evils resulting therefrom should be relieved by any means economically and socially sound, and suggested, "in its proper place . . . as one among a number of steadying influences, and at its proper time, the acceleration of public construction may well become useful."[1]

The word "acceleration" was carefully chosen, and represents a trend of this and other recent thought upon the problem.[2] Less emphasis is being placed upon the creation of a great reserve of work through postponement of construction in periods of great business activity, and more emphasis is being directed to timely acceleration of scattered margins of work available when the

[1]Text of the "Report of the President's Conference on Unemployment" quoted from *The Annalist*, pp. 1357–1358, June 27, 1930.

[2]See *Planning and Control of Public Works*, June, 1930, the report of the Committee of Recent Economic Changes of the President's Conference on Unemployment, including a report of Leo Wolman of the National Bureau of Economic Research; also "Public Works and Unemployment," Proceedings of the American Economic Association, published as a supplement to *The American Economic Review*, March, 1930, especially the discussion of Mr. Arthur D. Gayer, p. 27.

depression strikes. The change of emphasis is due to two factors, the first of which is, fundamentally, the conviction that the public works program is simply an alleviative, or, at best, only a slight off-set against some activity such as price inflation which is pretty much independent of the palliative recommended; that what is needed is not restriction upon production in "prosperous" times, but restriction upon inflationary tendencies. One can quite agree that acceleration of public works is not getting at causes, and still advocate the plan, without inconsistency, as an aid in relieving a situation which is actually confronting us, regardless of its cause. Under no circumstances, however, should this attitude divert our careful attention from determining fundamental preventive measures.

Close range observation of the practical aspects of postponing and financing public works, in the realm of positive action, has been the second influence shifting earlier emphasis upon amount and postponement to proper timing and acceleration of such work that is available when the depression comes. There appears to be an obstinate skepticism and a vigorous questioning of the advisability and possibility of delaying public improvements in the realm of educational facilities, hospitals, asylums for the defective, highway contruction, and the like. It is urged that there exists, generally speaking, a lag of such construction behind needs. If New York City be taken as an example, we find that a shortage of educational facilities has persisted since the war, in spite of a vigorous program of building; that water facilities, in the face of recent rapid expansion, appear to be inadequate; that a traffic problem, growing more rapidly than means to solve it, hinders the desirability of delay in subway and express highway construction.[3] As a practical problem, the creation of a vast reserve of public works, through postponement in prosperous times, takes on a new color. However, the very difficulties presented, the emphasis upon the fact that construction tends to lag in many quarters, lends support to the more recent doctrine that much can be accomplished by timely speeding up of the lagging reserve of needed public improvements. A vast reserve exists without planned postponement.

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[3]"Public Works and Unemployment," Proceedings of the American Economic Association, published as a supplement to *The American Economic Review*, p. 27, March, 1930.

Other practical problems which face the executor of such a plan, and which must be included in the range of factors conditioning our theories on the subject include the problem of the technique of proper timing of the accelerating process, of obtaining the united coöperation of the thousands of governmental units, of making advanced planning of construction requirements a fact, of avoiding unsound expenditures merely to make work, of preventing private interests from utilizing to their own ends the willingness of the public to coöperate, and of over-coming such political difficulties as to who shall direct the spending of money, and who shall benefit thereby. In addition, there are many closely related problems of a financial character. This paper will consider some of the fiscal aspects of utilizing public works to maintain business stability. Three topics will be considered: (1) financing improvements by creating indebtedness; (2) financing improvements out of current taxation; and (3) the problem of avoiding unnecessary expenditures.

I

Financing Public Improvement by Means of Indebtedness

Advocates of the plan to use public works as a means of maintaining economic balance, and especially those who emphasize amount rather than timely acceleration, have cast apprehensive glances at the legal hindrances surrounding the creation of indebtedness. The federal government, of course, is free from limitations upon the amount that may be created, but practically all state and local governments are subjected to constitutional, statutory, or charter limitations. The New York State Constitution, for example, while granting the legislature outright power to create indebtedness "to repel invasions, suppress insurrections, or defend the State in war," places limitations upon the amount that may be created for certain purposes. Limitations include $45,000,000 for soldiers' bonus debt, $300,000,000 for the elimination of railway crossings, and $10,000,000 annually until 1935 for constructing public buildings. If we go to another part of the country for an example, say Texas, we shall find limitations for certain purposes based upon percentages of the assessed valuation of taxable property. Roads, navigation, water control, preservation districts, certain water districts, and county road bonds are limited to 25 per cent of the assessed valuation of the property in the taxing district. A 2 per cent limit is placed

upon indebtedness for jails and courthouses. Limitations upon the tax rates are relied upon to control the amount of indebtedness for school districts. Similar restrictions of more or less rigidity, some constitutional, others statutory, are found in practically all states.

Municipalities, in 1927, were subjected to limitations upon the amount of indebtedness that might be incurred in all states except New Hampshire, Connecticut, and Vermont. The restrictions were embedded in the constitutions in 33 states, while the remaining were statutory.[4] In a majority of the states, the limitations were based upon the valuation of the property for tax purposes, and amounted to 5 per cent or less, while in two states the amounts were above 10 per cent. Nine states had limits ranging between 5 and 10 per cent.

In addition to limitations established by the state governments, a growing number of municipalities operate under home rule charters which include debt restrictions. Detroit, for example, in 1927, had a total charter debt limit, exclusive of school debt, of 11¼ per cent of the assessed valuation of the taxable property. San Francisco, in its charter, excluded water debt from any limitations and prescribed a 12 per cent limit for other purposes.[5]

This brief description of the extent of restrictions upon the creation of indebtedness raises the question as to the effectiveness of the proposal to utilize public works to maintain business stability. The very purpose of these limitations is that of retarding, although not stopping, the growth of public debt. To what extent do unused debt incurring margins exist? In answering this question, special attention will be given to the municipalities of Massachusetts and New Jersey.

The local governments of Massachusetts possess a vast amount of unused borrowing power, in spite of the low legal limitations upon the creation of indebtedness. The legal borrowing authority of the cities amounts to 2½ per cent of the average assessed valuation of the taxable property for the three preceding years, while the towns are permitted 3 per cent.

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[4]National Industrial Conference Board, *The Fiscal Problem in Illinois*, 1927, p. 34. Also Miller, E. T., "Legal Limitations on Taxes and Debts," *Southwestern Political and Social Science Quarterly*, December, 1928, p. 247.

[5]"Debt Limitations of Larger Cities," *Municipal Reference Library Notes*, February 23, 1927, p. 38.

TABLE I. Classification of Massachusetts Municipalities According to Indebtedness Outstanding January 1, 1929; Indebtedness Incurred Within the Debt Limits.[6]

Debt Within Limit	Cities		Towns over 5,000		Towns under 5,000		All Towns		All Cities and Towns	
Assessed Valuation of Taxable Property	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
0.50	0	0.00	0	7.59	133	56.36	139	44.13	139	39.27
1.00	4	10.26	19	24.05	40	16.95	59	18.73	63	17.80
1.50	8	20.51	20	25.32	37	15.68	57	18.10	65	18.36
2.00	17	43.59	20	25.32	15	6.35	35	11.11	52	14.69
2.50	8	20.51	12	15.19	10	4.24	22	6.98	30	8.47
3.00	2	5.13	2	2.53	1	.42	3	.95	5	1.41
	39	100.00	79	100.00	236	100.00	315	100.00	354	100.00

Table I shows that although two of the local governments classified as cities were over the legal debt limit on January 1, 1929, approximately 75 per cent of them had used only 2 per cent or less of their borrowing power. All towns were within the legal limit, and, as a group, had used very little of the borrowing privilege. The cities, taken as a whole, still possessed, on January 1, 1929, an unused borrowing margin of 0.57 per cent within the limit; towns having a population over 5,000 had 1.57 per cent of their 3 per cent limit unused; while towns under 5,000 had retained 2.19 per cent of their 3 per cent privilege.[7] To this unused borrowing power must be added the great amount of indebtedness that may be legally created without regard to the debt limit. Indebtedness as the result of establishing water, gas, and electric systems, for the construction of war memorials and tuberculosis hospitals, for acquiring land for public playgrounds, for acquiring street railway properties, and for certain emergencies is largely outside of the debt limits. In some cases, restrictions prevail on the amount that may be incurred outside of the debt limits. Approximately half of the present outstanding local indebtedness has been incurred outside of the legal limits. Table II bears out this statement.[8]

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[6]Computed from data in the *Annual Report on the Statistics of Municipal Finances*, 1929, pp. xxi–xxvii.

[7]Percentages computed from data in the *Annual Report on the Statistics of Municipal Finances*, Massachusetts, 1929.

[8]Compiled from *Annual Reports on the Statistics on Municipal Finances*, Massachusetts.

TABLE II. Percentage of Debt Outstanding Incurred Within and Without the Debt Limits by the Municipalities of Massachusetts, 1923–1930.

January first of	Cities			Towns over 5,000			Towns under 5,000		
	General Debt[1]		Enterprise Debt[2]	General Debt		Enterprise Debt	General Debt		Enterprise Debt
	Within the Limit	Outside the Limit	Outside the Limit	Within the Limit	Outside the Limit	Outside the Limit	Within the Limit	Outside the Limit	Outside the Limit
1923	45.3	28.2	26.5	49.1	27.8	23.1	51.5	18.3	30.2
1924	45.5	28.5	26.0	50.4	29.5	20.1	52.4	19.7	27.9
1925	45.1	30.3	24.6	47.9	34.1	18.0	52.3	23.6	24.1
1926	44.4	30.4	25.2	48.5	31.5	20.0	53.6	20.8	25.6
1927	42.6	30.8	26.6	48.0	32.4	19.6	52.1	21.6	26.3
1928	42.1	29.8	28.1	48.5	32.7	18.6	48.8	18.6	32.6
1929	43.3	28.4	28.3	50.1	31.6	18.3	46.8	20.8	32.4
1930	43.2	28.0	28.8	53.3	30.0	16.5	45.6	22.5	31.8

[1]General debt represents that class of debt which requires direct taxation to pay the maturing loans.

[2]Enterprise debt is retired from earnings of the enterprise without resorting to direct taxation.

There appears to be a tendency on the part of the cities to incur less general debt within the limit, and more enterprise debt which is without the limit. Towns over 5,000 population are incurring less enterprise indebtedness while trends of a positive or negative character are not evident for general debt within or outside of the limit. The smaller towns, of late, appear to be borrowing less within the limit, and more outside, both under general and enterprise debt.

In New Jersey, the legal limit upon the creation of indebtedness by local governments amounts to 7 per cent of the average assessed valuation of the real property for the preceding three years. Borrowing without regard to this limit is permitted in certain school districts, and for many purposes. In fact, exemptions are so extensive that in 1927 only about 27 per cent of the local debt outstanding, excepting that of counties, had been created within the limit. The following table provides detailed data on the amount of borrowing outside of the debt limit by legislative authority.[9]

[9]Computed from data in the *Annual Report of the Department of Municipal Accounts*, 1927. Only two of these reports have been published, the first in 1917.

TABLE III. Indebtedness Outstanding in New Jersey Municipalities on December 31, 1927, Incurred Within and Without the Debt Limit.

POLITICAL SUBDIVISION	Percentage of Outstanding Debt Incurred Outside of the Limit	Percentage of Outstanding Debt Incurred Within the Limit
Counties	17.7	82.3
Cities	69.0	31.0
Towns	78.9	21.1
Boroughs	71.0	29.0
Townships	74.4	25.6
All	62.2	37.8
All except counties	73.3	26.7

TABLE IV. Classification of New Jersey Municipalities According to Indebtedness Outstanding December 31, 1927; Indebtedness Incurred Within the Debt Limit of 7 Per Cent.[10]

Debt Within Limit	Cities		Towns		Boroughs		Townships		All Local Units	
Assessed Valuation of Real Property	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent
0.0	3	5.88	2	8.70	37	15.23	102	43.40	144	26.09
.5	—	—	—	—	20	8.23	31	13.19	51	9.22
1.0	—	—	2	8.70	14	5.76	14	5.96	30	5.42
1.5	1	1.96	—	—	8	3.29	12	5.11	21	3.80
2.0	2	3.92	0	—	16	6.58	12	5.11	30	5.42
2.5	2	3.92	1	4.34	16	6.58	15	6.38	34	6.15
3.0	3	5.88	0	—	4	1.65	7	2.98	14	2.53
3.5	3	5.88	3	13.04	9	3.70	12	5.11	27	4.88
4.0	3	5.88	1	4.34	10	4.12	9	3.83	23	4.16
4.5	4	7.84	1	4.34	18	7.41	3	1.28	26	4.70
5.0	5	9.80	3	13.04	16	6.58	1	.43	25	4.52
5.5	6	11.76	1	4.34	14	5.76	4	1.70	25	4.52
6.0	3	5.88	4	17.39	17	7.00	5	2.13	29	5.24
6.5	5	9.80	2	8.70	13	5.35	4	1.70	24	4.34
7.0	7	13.73	2	8.70	12	4.94	2	.85	23	4.16
7.5	2	3.92	1	4.34	4	1.65	—	—	7	1.27
8.0	—	—	—	—	—	—	1	.43	1	.18
8.5	—	—	—	—	1	.41	1	.43	2	.36
9.0	—	—	—	—	4	1.65	—	—	4	.72
9.5	—	—	—	—	1	.41	—	—	1	.18
10.0	2	3.92	—	—	3	1.23	—	—	5	.90
Over 10.0	—	—	—	—	*6	2.47	—	—	*6	1.08
	51	99.97	23	99.97	243	100.00	235	100.01	552	99.84

*Range from 11.0 to 27.0 per cent.

[10]Compiled from data in *Annual Report of Department of Municipal Accounts*, New Jersey, 1927.

On December 31, 1927, the local governments of New Jersey, as a group, had not utilized all of their legal borrowing power, although 27 had overstepped the legal limit. Table IV shows that 26 per cent of the local units had no indebtedness within the legal limit; 40 per cent had less than 1 per cent; and approximately half had less than 2 per cent. The remaining half of the municipalities were distributed fairly evenly in the remaining percentage brackets up to 7 per cent. The indebtedness of the 27 municipalities which had exceeded the legal limit ranged from 7.13 to 27 per cent. However, on the basis of all debt borrowed within and without the limits, the percentages ranged from 8.25 to 82.02.[11]

An examination of 22 of the largest municipalities in New Jersey reveals that in 1927 their borrowing within the debt limit ranged from 1.82 to 6.99 per cent of the assessed property valuations.[12] Twelve of these governments had indebtedness within the limit amounting to more than 5 per cent; four between 4 and 5 per cent; four between 3 and 4 per cent; one at 2.58 per cent; and one at 1.82 per cent.[13] On the basis of indebtedness within and without the debt limit, the percentages for these local governments ranged from 10.83 to 31.87.[14] No allowance is made for accumulated sinking funds.[15] By way of comparison, it is interesting to note that on January 1, 1929, the 39 municipalities classified as cities in Massachusetts had outstanding a total debt, borrowed within and without the debt limit, amounting to only 4.45 per cent. On January 1, 1928, a date comparable to the New Jersey data, the percentage stood at 4.43.[16]

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[11]These percentages representing all debt outstanding do not make allowance for sinking funds accumulated where the debt was on this basis. However, all debt incurred since 1916 has been on the serial arrangement.

[12]Includes Asbury Park, Atlantic City, Bayonne, Englewood, Hackensack, Camden, Gloucester, East Orange, Irvington, Montclair, Newark, Orange, West Orange, Hoboken, Jersey City, Union City, Trenton, New Brunswick, Perth Amboy, Paterson, Passaic, and Elizabeth.

[13]Compiled from data in the *Annual Report of the Department of Municipal Accounts*, 1927.

[14]*Ibid.*

[15]See foot-note No. 11.

[16]*Annual Reports of the Statistics of Municipal Finances*, Massachusetts, 1928, p. xxi in each report. Allowance for sums in sinking funds made. Most debt, however, is on serial basis.

A recent development in New Jersey is of importance in this matter of unused debt margins and speeding up public construction. Chapter 181 of the Laws of 1930 imposed, under certain conditions, a limit upon the future creation of special assessment debt. This act provided a limit of 15 per cent of the assessed valuation for all debt based upon uncollected special assessments, whether confirmed or not, and whether or not the improvement was completed. The limit aimed to curb what was generally accepted as a tendency toward an excessive use of public credit for special assessment purposes. This limit along with the general 7 per cent debt, plus school debt and other deductible items, allowed a total ratio of gross debt to average valuation well above 25 percent.[17] This law automatically put 33 municipalities over the debt limit, and stopped construction in most of these local governments just when business conditions called for completion of projects under way. A resumption of improvements will be possible within a few years when the debt base (assessed property valuations) has grown, and/or when outstanding debts have been reduced. Unfortunate as this has been from the viewpoint of the "public works plan," it would have been unwise to ignore the weakened fiscal condition of these municipalities. Arrangements, however, should have been made whereby losses on work already under construction would have been avoided.

From this survey of the unused borrowing power in the local governments of Massachusetts and New Jersey we may conclude that it would be unnecessary to extend the borrowing power in these states. In fact, a way must be found to curb the tendency of certain political subdivisions in New Jersey to over-mortgage future taxes to debt charges.

A detailed study of the unused debt power in other states cannot be made in this article. We shall have to depend upon the samplings of the President's Committee on Unemployment which indicated that debt limits would not, at present, generally interfere with the program of accelerating public works.[18]

One other aspect of financing by means of indebtedness will be considered. What can be done to preserve borrowing margins in the larger cities which are usually nearer to the debt limits?

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[17]Mimeographed "Report of the Commission on County and Municipal Taxation and Expenditures on Chapter 181 of the Laws of 1930," p. i.

[18]Text of the "Report of the President's Conference on Unemployment," *The Annalist*, pp. 1357–1358, June 27, 1930.

Under prevailing laws in most states, indebtedness incurred during the present depression will be outstanding when the next one occurs. If public improvements are to play an important part in maintaining business stability, it would appear logical that indebtedness created during one depression should be matured before the next one in order to conserve borrowing margins.

Undoubtedly much indebtedness now created could be retired within shorter periods than are taken at present. New Jersey municipalities, for example, may issue securities, depending upon the purpose, for periods ranging from 5 to 50 years; Massachusetts local governments issue securities with maturities of from 5 to 30 years. That indebtedness for most purposes can be retired within shorter periods is evidenced by the fact that the Legislature of Massachusetts has often required that borrowing outside of the debt limit be retired within a much shorter time than is required by the general law. The widely prevailing formula now being advocated calls for retirement within the lifetime of the improvement. This has been a necessary agitation, but like many crude generalizations, it is defective in that it tends to cause municipalities to take the maximum periods allowed rather than shorter ones which are often practicable. The use of serial bonds rather than sinking fund bonds will result in less refunding, and thus help to conserve borrowing power. Another method of maintaining borrowing margins is to be found in requiring municipalities to retire bonds of largest denominations early in the period of indebtedness rather than later, and in forcing municipalities to start maturing serial bonds within a very short time after they have been issued, rather than waiting several years. The practicability of these suggestions is to be found in the experience of Massachusetts.

II

Financing Public Improvements Out of Current Taxation

Many political divisions finance all or a part of their public improvements out of current taxes. Under such conditions, a sudden increase in the volume of construction coming at a time when property assessments were on the decline would presumably increase tax rates, and in many quarters, during depressions, cause some hardships to be placed upon taxpayers. It is in these communities that emphasis must be placed upon speeding up of

public work already authorized or under construction, rather than relying upon a larger amount of construction to counterbalance a condition of depression. Numerous other obstacles tend to interfere with increasing tax rates in times of depression. Politically minded office holders are willing to champion improvements and point to them as accomplishments under their regime only when the tax rate will not be immediately increased beyond the point which will threaten their political security. It is this fear on the part of politicians which often sends governments on a borrowing policy whereby the tax rate will not be vigorously affected until some safer future time.

Can these obstacles be removed? Should they be removed? For those who agree with the President's Committee in its emphasis upon speeding up work already available, little will need to be done. For those who would push forward an augmented volume of construction, at least two tempting doors are open which will lead out of these difficulties. Governments can change from the policy of financing improvements out of current taxation to a policy of borrowing, and thus avoid immediate alterations in the tax rate. Or they may set up a reserve fund in prosperous times when taxes could be collected with less political hazard, to be used in depressions to augment the volume of construction.

Speaking generally, both of these proposals are unsound. Governments that have succeeded in maintaining the policy of financing out of current taxation should be encouraged to avoid a change which would subject them to possible unsound fiscal principles that are often concomitants of borrowing operations. This is especially true where audits and proper state supervision of the creation and administration of local indebtedness are absent, as is the case in most municipalities. Once embarked upon a borrowing program, it is not easy to return to financing improvements from current taxation. The suggestion that a fund be established and enlarged during prosperous times is not entirely meritorious. Experience has taught that similar funds and surpluses, whether earmarked or not, are often mismanaged. This has been a most powerful influence in eliminating sinking fund securities and requiring serial bonds in those states which have abandoned sinking fund transactions. In New Jersey, large premiums from the sale of municipal securities have even been eliminated in order to avoid the political and dishonest aspects of surplus financing. States which make genuine audits, and not

mere inspections, of local finances would be subject to less unfortunate results. Assuming this to be the case and assuming that the public would sanction the accumulation of such a fund to be used at a later date, it would be necessary to establish safeguards to avoid depletion of the fund on the basis of a depression that did not exist. Where wisdom could be expected or forced upon governments in the administration of such a fund, it should be managed so as to be available upon short notice, and should be used, not held back, when needed.

The wide-spread prevalence of legal limitations upon taxes is another potential obstacle which must be considered in proposals to finance added improvements out of taxation. In 1927, 46 states had tax limits applying to either all or some of the local governments. These limitations, as those upon indebtedness, are of a constitutional, statutory, or charter character. Thirty-four states lay down maximum tax rates, eight states place restrictions upon the amount of the tax levies, while four states combine these two methods.[19] Examples of such limitations in a few states are as follows.[20]

In Minnesota, all levies of cities, villages, and school districts are limited to $100 per capita, except for indebtedness contracted prior to and including 1921, while in Nebraska the law states in dollars and cents the amounts that various cities may raise by means of taxes. Missouri restricts all local government tax levies, exclusive of those for indebtedness, to a maximum of 10 per cent in excess of the previous year's tax levy, although this provision may be overruled by a majority vote of the electors, within the limits prescribed by the constitution. Colorado limits all local tax levies to 5 per cent in excess of the previous year's levy, except for bonded indebtedness. A similar plan is followed by New Mexico except that the state tax commission may authorize this amount to be exceeded. In North Dakota, local levies except for local improvements and sinking funds may exceed the average of the levies of 1918, 1919, and 1920 only in the same proportion as the present assessed valuation exceeds the assessed valuation in 1919. However, this may be exceeded to the extent of 25 per cent by a majority vote of the electors.

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[19]National Industrial Conference Board, *The Fiscal Problem in Illinois*, p. 35.

[20]*Ibid.*

In Oregon, the constitution provides that revenue raised by local governments for purposes other than debt services may exceed the corresponding amount for the previous year by only 6 per cent. Some Oregon municipalities have charter limitations upon tax levies.

States which avoid the evils of uniformity and rigidity in limiting taxes will not interfere extensively with the "public works plan." Such evils are avoided for municipalities in 15 states, and for counties in 8 states by graduating the rates upon the basis of population or assessed valuation of the taxable property. Many municipalities may exceed the limits by a favorable vote of the electorate, while in Colorado and New Mexico, exceptions may be made by permission from state or local boards. Nebraska is the only state which limits in dollars and cents, and these limits are changed frequently. Speaking broadly, there is a degree of elasticity in most limits which should supply sufficient margins to make effective the plan of accelerating public works.

III

Some Fiscal Tactics Used to Avoid Unnecessary Expenditures

At a time when popular enthusiasm is running high in favor of extending governmental construction, it is necessary to devise, or have at hand, means of avoiding excesses and unnecessary spending. It is also essential that the plea to extend public works to relieve unemployment shall not be abused. The New Jersey electorate, by way of example, recently approved the issuance of $100,000,000 worth of bonds, in part, at least, because of the wide-spread use of the argument that the funds would be used to relieve unemployment. This argument, defending the bonds, was included in speeches made throughout the state. On the face of it, the $83,000,000 of this amount to be issued for highway purposes would go far in providing employment. Actually, however, over half of this sum will be used for purchasing rights-of-way, and spent over a five year period, $18,000,000 per year for the first four years, and the balance in the fifth year. Thus, the amount which will be used in such a way as to give employment is only a small proportion of the whole, and much of that will be spent, it is hoped, in more prosperous times. Seven millions of dollars of the $100,000,000 are to be used in purchasing lands

for potable water protection and conservation. This, of course, will not give employment. The remaining sum will be used to construct buildings at state institutions at the rate of $3,000,000 per year. This will give some employment.

What can be done to avoid misrepresentation in order to capitalize popular sympathies? Fundamentally the problem is one of getting the facts honestly before the public. It is just as important that the facts be given convincingly as that they be honest. If a way could be found to accomplish this end, most of the problems of democracy would be solved. Taxpayers' associations when not dominated or created by political or selfish interests can be effective in this direction. However, organized citizens must be possessed with an honest civic interest of far greater intensity than that of the average citizen if satisfactory results are to follow.

Governments which finance capital improvements wholly, or in part, out of current taxation are in a better position to curb unnecessary expenditures than are those which resort extensively to borrowing. Even these governments are often tempted in times like the present to yield to the borrowing policy. When this can be avoided, however, financing is more quickly reflected in the tax rate which is watched closely by the taxpayers and the politicians. When the pocketbook nerve is touched, taxpayers tend to scrutinize more effectively proposed expenditures. Were it possible to have indebtedness reflected reasonable quickly into the tax rate, a retarding influence upon spending would exist. That this is possible, and can be effective, is evidenced by certain legislation in Massachusetts applicable to local governments. Chapter 338 of the laws of 1923 provided that before a loan could be authorized for certain purposes, there was to be provided from revenue a sum equal to 25 cents on each $1,000 of the assessed valuation of taxable property of the preceding year. This automatically provided a small contribution from current revenue. In 1913, a similar provision was enacted relative to borrowing for departmental equipment. In many cases, this resulted in the equipment being purchased entirely out of current taxation.[21] In 1924, the Legislature, in approving loans for municipalities outside of the debt limit, required that a sum equal to not less that 10 per cent of the authorized loans should be raised by current taxation, and if the purpose of the loan was one that, under

[21] *Annual Report on the Statistics of Municipal Finances*, 1921, p. iv.

general law, might run for 20 years, the time was reduced to 15 years.[22] The ultimate purpose of these arrangements was to cause the voters upon bond issues to feel the increased financial burden in the year of the authorization, and hence cause the voters to be more critical of any increased expenditure. The principle involved is applicable to any governmental unit, but because of the relationship of local governments to the state, where home rule is absent, the principle can be more easily made a fact for local governments. In spite of the fact that many voters upon bonds are not taxpayers, the provisions seem to have been effective in Massachusetts. In the few remaining states that permit only property owners to vote upon certain bond issues, this arrangement is undoubtedly effective. Other tactics of pinching the tax rate include forcing heavier payments, on the serial plan of retirement, early in the life of the securities, and hence increasing the tax rate. Such methods have greatest possibilities in connection with local governments dependent upon the state for authority in financial matters.

The Indiana plan for supervising local finances offers an alternative for preventing expenditure based merely upon the whim of the moment. Upon petition from ten property-owning taxpayers, the State Board of Tax Commissioners will investigate proposed expenditures, whether to be financed out of current taxation or borrowing, with a view to judging their necessity. Should the expenditure be considered unnecessary, the Commission has the power to disapprove it. Likewise, the Commission may pare down proposed expenditures when it believes that this will result in a greater return for each tax dollar. It may force a municipality to seek lower prices for the proposed construction when this seems to be in the interest of sound economy. Without treating the home rule problem involved, here is a system that appears to be bringing reductions in tax levies and in indebtedness. Some evidence of the result of the arrangement with respect to tax levies is revealed in the following table.[23]

These data must be considered in the light of the following facts. There are 1585 taxing units in Indiana. The foregoing figures indicate that the budgets of only relatively few have been appealed in any one year. Certain budgets are appealed year

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[22] *Annual Report on the Statistics of Municipal Finances*, 1922, p. v.

[23] Compiled from data in "Reports of State Board of Tax Commissioners," 1921–1929, *Indiana Year Books*, 1921–1929.

after year. The reductions ordered were small as compared with the total local expenditures of more than $100,000,000, but were substantial as compared with the total expenditures of the units in which the reductions were directed.

TABLE III. Appeals and Reductions in Local Budgets in Indiana, 1921–1929.

Year	Number of Districts From Which Appeals Were Filed	Number of Districts For Which Reductions Were Ordered	Amounts of Reductions in Current Budgets
1921	42	39	$1,254,448
1922	74	46	1,034,572
1923	37	25	1,874,070
1924	42	34	1,479,000
1925	113	65	1,554,004
1926	95	51	1,639,187
1927	134	77	4,674,623
1928	142	80	1,290,031
1929	134	83	3,269,092

In regard to indebtedness, from March, 1921 to December, 1929, the State Board of Tax Commissioners approved bonds amounting to approximately $45,000,000[24] compared with $30,366,086 disapproved.[25]

The following table compares increases in local tax revenues in the North Central States from 1922 to 1926.[26] The Indiana law became effective in March, 1921.

TABLE IV. Increases in Local Taxes, North Central States, 1922–1926.

State	Percentage Increase in Local Taxes	Per Capita Local Taxes in 1922	Per Capita Local Taxes in 1926	Percentage Increase of Per Capita Taxes, 1922–1926
Indiana	14.7	$34.23	$37.45	9.4
Wisconsin	19.4	36.09	40.69	12.7
Illinois	22.5	31.70	36.30	14.5
Ohio	25.8	34.73	40.00	15.1
Michigan	30.0	35.92	41.43	15.3

[24]Estimated; between March, 1921 and December, 1927, indebtedness approved totalled $37,439,955; between October 1, 1928 and October 1, 1929, the amount approved was $4,056,147.

[25]*Indiana Year Books*, 1921–1929, "Reports of the State Board of Tax Commissioners."

[26]Chamber of Commerce of the United States, "Relation between State and Local Government," p. 15.

It will be observed that Indiana compares most favorably with her neighbors in having a lower increase in per capita taxes from 1922 to 1926. The evidence is partial to validation of the claim of many advocates of the Indiana plan that much unnecessary spending is being avoided. It is reasonable to believe that the State Board of Tax Commissioners in Indiana will prove to be a stabilizing influence on local governments which are prone to spend unwisely under the plea to relieve unemployment.

State supervision of local budget making, state inspection and audit of local accounts, compulsory reporting of local financial statistics, uniform accounting, and other fiscal controls are established in a hit and miss fashion in many states. Comprehensive, well-planned, and complete means of supervising municipal financing are the exception rather than the rule, consequently much can be done in this direction to avoid unwise expenditures during business depressions.

In conclusion, it may be said that, at best, the plan to aid the stabilization of business by timed acceleration of public construction, or this coupled with creating a larger volume of building in depression, is fraught with many practical problems. Not among the least are those centering around the financial aspects of the plan. The main problems therein are not those of obtaining further grants of authority to extend indebtedness or current taxation, but of avoiding unnecessary and unwise expenditures. Where it appears that a construction project is essential for reasons other than relieving unemployment alone, the methods of financing should be in harmony with trustworthy doctrines of public finance. In the long run, only when the public works program is carried on under sound fiscal principles, will it bring its maximum contribution to stabilizing business. Worthy causes can never justify bad financial procedure and practices.

THE USE OF THE LICENSE LAW IN THE REGULATION OF BUSINESSES AND PROFESSIONS

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This paper is based on a study made of the license laws of eighteen selected states.[1] These states were picked from all sections of the country with the view toward obtaining a fair sample of what laws might be found in the other thirty states.

The term "license law" was understood to include all laws which provide that governmental sanction must be given before the service or the product being regulated may be offered to the public. This sanction is given if the proper administrative authorities are satisfied that the imposed regulations have been or will be complied with.[2] Liquor dealers' licenses, motor vehicle operators' licenses and avocational licenses (i.e. hunting and fishing) were, however, excluded. Further delimitations are the laws regulating (1) Banks; (2) Insurance Companies; (3) Corporations; and (4) Public Utilities. These were excluded because legislation upon each of these subjects is large enough to merit a separate study, and the courts and our legislatures have built up a distinct body of law for each of these fields.

The typical license law sets out the conditions under which a license becomes necessary; the requirements which must be met by applicants for the license; the duties and restrictions imposed upon the licentiates; the fees imposed; the administrative agency authorized to issue such licenses; the powers enjoyed by this agency in the administration of the law; the procedure to be followed in the revocation of licenses, and the grounds upon which such action may be taken; and finally, the penalties for violations of the law.

These laws, enacted under the police power, form one of the chief wedges used to break down the barriers to governmental

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[1]California, Oregon and Washington from the Pacific Coast; Maine, Massachusetts and New Hampshire from New England; New Jersey, New York and Pennsylvania from the Atlantic Coast; Wisconsin from the Northwest; Illinois, Indiana, Kansas and Ohio from the Middlewest; Maryland, Arkansas, North Carolina and Virginia from the South.

[2]See Freund, *The Police Power, Public Policy and Constitutional Rights*, sec. 36.

regulation of the economic activities of the citizens of the state. They undertake to increase the margin between illegality and actual injury by setting up preventive standards which will check the tendency toward evil before actual injury has been suffered. They do this by setting up positive standards or rules of conduct which must be met by those who desire to enter the restricted calling, and by prescribing certain regulations for the licenses which direct them as to what they shall do or may not do.[3] Put in other words, the license law undertakes to prevent damages by making it unlawful to perform certain acts which are liable to cause damages, whereas the old common law gave relief only in the case of injuries already done. To illustrate. A physician has always been liable for the death of his patient if it can be proved that the death was caused by the acts of or the negligence of the physician. But how prove this? So the license law was enacted to insure adequately trained physicians, so that the occasion for such liability should not arise. To give to these laws the effective legal sanctions which are necessary for their enforcement, we have introduced the provisions for the revocation of licenses. Professor Ashley's conclusion with regard to the medieval guild regulations "That men sought refuge from the weakness of the individual conscience in the strength of a corporate conscience" seems applicable when we set out to account for our present system of license laws.[4]

Having suggested the significance of these laws the query arises: to what extent have the states made use of this form of control? Examination of the statute books from 1850 to 1929 reveals the fact that the number of callings being restricted by license laws is increasing at a cumulative rate. Very few of the laws have been repealed. Up to 1929 the eighteen states covered had provisions for 1,364 kinds of licenses. This does not include the fairly large number of state tax licenses found in some of the southern states, and which may be regulatory in their effect. These 1,364 license provisions may be roughly grouped under 210 headings, each heading describing in a general way the business or calling restricted. Thus physicians, chiropractors, architects, barbers, cosmeticians, detectives, securities' dealers, egg breaking plants, fertilizer dealers and salesmen, masons, private bankers,

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[3]See Freund, *The Police Power, Public Policy and Constitutional Rights*, sec. 29. Also Freund, *Standards of American Legislation.*

[4]See Ashley, *Economic History*, Volume I, Part I, p. 73.

etc., each received a separate heading. This does not mean that each state licensed 210 different callings. On the contrary, it seems that the states are not nearly so much in agreement upon what callings shall be restricted as they are that restrictions shall be enacted. Only nine callings were licensed by all eighteen states.

The bulk of these laws were passed in the interest of certain economic groups. Thus we find that at least thirty-two professions and occupations have asked for and obtained license laws to aid them in building up the standards of their calling.[5] Other license laws attempt to protect the agricultural interests of the states by regulating the quality of goods sold to agriculturists,[6] by protecting farmers and dairymen against fraud in connection with the sale of their products,[7] by regulating the health and quality of agricultural stock,[8] and by restricting the practice of arborists, animal vaccinators, horseshoers and veterinarians who render services to agriculture. Labor is protected by license laws designed to increase the safety of certain dangerous occupations (e.g. miners and mine officials are licensed), and by laws licensing tenement house manufacturers and persons who let out work to such manufacturers, employment agencies, employment shipping masters, immigrant lodging houses, and master stevedores—all callings in which labor is in danger of economic oppression. Small investors are protected by licensing the companies

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[5]Professions treating diseases and injuries—physicians, osteopaths, chiropractors, naturopaths, physiotherapists and limited practitioners; professions treating only certain kinds of ailments—dentists, optometrists, chiropodists and midwives; professions rendering auxiliary services in treating the sick—registered nurses, public health nurses, practical nurses, dental hygienists, pharmacists and their assistants; professions and callings which may affect the public health if not properly conducted—embalmers, undertakers, veterinarians, barbers, cosmeticians, plumbers, health officers and water purification plant operators; the engineering professions and allied callings—architects, professional engineers, land surveyors, building contractors, master masons and electricians; other professions with a public interest—attorneys, certified shorthand reporters and public accountants.

[6]Thus, manufacturers and dealers of agricultural lime, agricultural seeds, serums and vaccines, commercial feeds, fertilizers, insecticides, poultry and stock feed, and poultry and stock medicines are licensed.

[7]Thus, agricultural commission merchants, warehousemen, cream and milk buyers, cream and milk weighers, cream testers, dairy exchanges, farm products' graders, poultry dealers and public weighers are licensed.

[8]Thus, apiaries, dairies, nurserymen and their agents, and stallion owners are licensed.

and individuals offering investment opportunities to the public.[9] An attempt to classify these laws in a more conventional manner (i.e. health, safety, fraud, morals) meets with several difficulties. The same law may come within several classifications, while doubt arises as to which if any of these classes another law comes under. With these qualifications, we may say that at least 481 of these laws involve public health, 204 laws involve public safety, 353 laws seek to protect the public against frauds of various kinds, 108 laws are clearly measures to protect the public morals, and 175 laws protect the natural resources of the state (mostly fish and game).

From this it can be seen that the increasing use of the license law is not confined to any one field. It is but a part of the general trend toward increased governmental regulation of all forms of our social and economic life. Specific causes for this trend are hard to evaluate. Nevertheless, the two principal ways in which license laws originate is of interest. One way (and this is especially true in the case of professional licenses) is that in which an interested group appears before the legislature and asks to be regulated. Opposition to the bill is unorganized or even noneixstent at the time, so the asked-for law is passed. In the other case the law is enacted to correct an existing evil. Bail bond brokers are found to be charging exorbitant rates of interest or are found to be too assiduous in furnishing bail, so the legislature is asked to curb the evil. The wide range of requirements found in the different states for the same calling leads one to suspect that in some instances, at least, neither the legislators nor those who insisted upon regulation knew just what the evil to be guarded against was, nor how it was to be checked.[10]

Requirements

The requirements for a license set up by the law usually reveal the evils against which the law is directed, and the measures taken to check it. These provisions read together with the clauses setting forth the grounds upon which licenses may be

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[9]Corporation securities' issuers, dealers and their agents, building and loan associations, building and loan agents, insurance brokers, agents and solicitors, insurance adjusters, private bankers, and real estate brokers and agents operate under licenses.

[10]Professional license laws are fairly uniform, but this does not hold true for many business and occupation licenses.

revoked show the new standards of social obligations which have come to be accepted by society. They also help to answer the question, how sincerely and efficiently has the legislature met its problems. Has it laid down definite standards or principles to guide the licensing authorities, or has it simply granted wide discretionary powers to the administrative authorities? We will, therefore, analyze a few of the provisions.

Before taking up specific provisions it may be well to point out that the laws (through amendments) become increasingly more detailed and explicit as the time in which they remain on the statute books increases. This is no doubt due to the fact that the increased experience in regulating the restricted calling which is gained with time enables the administrative authorities and our legislators to obtain a clearer conception of the evils against which the law is directed, and the difficulties which are met in checking these evils.

The requirements for a professional license have become fairly uniform. Thus the laws usually require applicants to be of good moral character, of a prescribed minimum age, to have a set minimum general education and professional training, to pass an examination, and to pay a license fee. The amount of general education and professional training required varies, of course, from profession to profession and from state to state. Thus the amount of professional training required for applicants for a barber's license varies from six months (Washington) to three years (Illinois). Again, barbers, in states where licensed, must have a grammar school education; chiropractors must have a high school education; physicians must have an A. B. degree; cosmeticians desire a four year high school requirement, but so far the laws prescribe only a grammar school education. If the trend shown in law and in medicine (the two professions which have been restricted for the greatest period of time) is carried over to the callings more recently restricted, then we may predict that the cosmeticians will sooner or later achieve their goal. Since the World War a citizenship requirement has been introduced, so that today at least thirty-two different callings have been affected by this provision.[11] In some cases, at least, the added

[11]Architects, attorneys, auctioneers, aviators, barbers, billiards hall managers, certified shorthand reporters, chiropractors, crab takers, dentists, detective agencies, detectives, professional engineers, fish breeders, fish dealers, packers and wholesalers, hunting and fishing guides, insurance

restriction is little more than an expression of provincialism. One other feature of these laws should be mentioned. The provisions for the reciprocal exchange of licenses between states continue to increase. Usually, an equivalent standard and reciprocity are insisted upon before such exchanges are permitted. The license board is made the judge as to whether or not these conditions have been met—and the boards have introduced the practice of making reciprocity agreements with each other.

When we turn to the license laws for trades and businesses, the requirements are necessarily different. The one almost universal provision in all these laws is the familiar provision that the applicant must be of good moral character. In practice this test is valueless, but our legislators are very fond of it. More effective restrictions designed to secure reliable persons to carry on the licensed callings are now appearing. The most important of these is the bond requirement. Here the applicant must file a bond conditioned upon rendering honest and adequate service and compliance with the license law. Failure to do so is followed by a suit against the bond. The best illustration is found in the case of agricultural commission merchants. There the shipper who is dissatisfied with the amount paid him by the merchant must file a complaint with the merchant, and ask for an accounting. If a satisfactory settlement is not forthcoming within a week or ten days, the matter is reported to the license authority—usually the Director of Agriculture. This authority must endeavor to obtain a satisfactory settlement. Failing in this, the Director must hold a hearing and make findings of fact. The shipper may now bring suit against the bond. The findings of the Director are transmitted to the court, and are to be regarded as prima facie true. The New York law licensing milk buyers goes so far as to declare that whenever a milk seller brings suit against a milk buyer and recovers, the balance of the bond stands forfeited to the state. If these laws prove to be as effective as they appear on their face, then it would be well to extend their use.

Other requirements which are also designed to secure reliable and law abiding licensees are that the license shall not be granted

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agents, junk dealers, labor employment agencies, land surveyors, limited (healing) practitioners, masters, pilots and engineers of inland water boats, physicians, mine foremen and similar officials, osteopaths, pawnbrokers, peddlers, pharmacists and their assistants, public accountants, real estate brokers, steam ship ticket agencies, trappers, and agencies to transmit money to foreign countries.

until after a public notice of the application for the license and opportunity for protest against its issuance,[12] and that applicants for a license must be recommended for a license by their employer.[13] The recent introduction of the public notice and hearing test for corporation securities' agents marks a step in advance over the older laws. In Ohio notice of the application must be published one week. In Maine and New Hampshire the notice must be published two weeks. Then, if no protest has been made and the applicant can establish his reliability, the license is issued.

A different type of restriction is found in the laws licensing manufacturers and importers of certain specified products. The purpose here is not to regulate the manner in which the calling shall be conducted, but to protect the consumer against the sale of inferior or adulterated products. The most stringent of these restrictions is the one providing that the license is held on the condition that the product manufactured by the licensee conforms to the minimum standard prescribed either by the law or the authority issuing the license. The regulation of the quality of goods manufactured was undertaken on an extensive scale by some of the states in the early part of the nineteenth century, the New York trade code being the best example. In 1846 this was abolished by constitutional amendment, and the other states also relaxed or repealed such regulations. Today, North Carolina is the only one of the eighteen states which has seriously undertaken to regulate the quality of goods manufactured for sale.[14] That state also has two license laws which empower the license authority itself to prescribe the standard of quality to be main-

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[12]Found in laws regulating corporation securities' dealers, employment agencies, ore dealers and soft drink sellers.

[13]This provision is found, for example, in laws licensing real estate and insurance agents.

[14]Businesses restricted by laws prescribing the minimum standard of quality of the goods manufactured are: agricultural lime, in North Carolina and Pennsylvania; agricultural seed dealers, in North Carolina, Ohio and Washington; beverage manufacturers, in Pennsylvania and Wisconsin; commercial feeds, in Indiana, Oregon, Wisconsin and North Carolina—where license authority prescribes the standard; commercial fertilizers, in Maryland, North Carolina and Pennsylvania; illuminating oils and gasoline, in North Carolina; linseed oil, in North Carolina; milk vendors, in Massachusetts and New Hampshire; soft drinks, in Ohio; soft drink extracts, in Ohio. Most of the states provide, too, that nurserymen may sell only healthy and non-insect infected nursery stock.

tained in the manufacture of certain commodities.[15] In neither case does the law require a hearing or even a notice of any proposed change in standard before the new standard is adopted. A more generally accepted form of regulation is found in the laws which require manufacturers to obtain a permit to sell their product. Such permit is issued and held upon condition that a correct analysis of the contents of each of the brands produced is filed with the license authority, and that the name of the brand is not, in the opinion of the license authority, misleading. To make these laws effective, it is frequently provided that the license authority shall, from time to time, analyze each brand sold and shall publish the results of its analyses. These findings are prima facie true when used as evidence in court. Sometimes the license authority is even empowered to seize and hold unregistered or improperly registered or branded goods. In the case of commercial fertilizers the license authority is sometimes directed to publish the results of its analyses "and such other additional information as it deems advisable." In Maryland this may include "the approximate value of each brand as determined by its contents and by conferences with proper officials in adjacent states." In Washington, the Director of Agriculture may publish "the comparative value per ton."

In a number of business license laws especially those involving the public health and safety, the license is issued and held upon the condition that the construction and equipment of such licensed plants or establishments and the manner of conducting them conform to the general standards specified by the law and the administrative regulations which are issued to "fill in" the laws.[16]

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[15]Such provision is found in the North Carolina laws licensing manufacturers and importers of commercial feeds, and illuminating oils and gasoline.

[16]Laws to this effect are used to regulate bakeries in New Jersey, New York, Pennsylvania and Wisconsin; barber colleges in Oregon and Washington (also regulated but not licensed in California and Illinois); beverage manufacturers in Ohio; canneries in Ohio; infant boarding homes in Kansas, New York, Massachusetts, New Hampshire, Pennsylvania and Wisconsin; cleaning and dyeing establishments in California, Indiana, Ohio, Pennsylvania and Wisconsin; cosmetology schools in Arkansas, California, Kansas, Oregon, Washington and Wisconsin; dairy products manufacturers—such as pasteurization plants, ice cream plants, condensaries and milk process plants in California, Illinois, Kansas, Massachusetts, New Jersey, Ohio and Wisconsin; dance halls in Illinois and Pennsylvania; dead bodies' disposal plants in Oregon; firms to install or repair or operate elevators in Pennsylvania; sardine packers and products manufacturers in California; game

Such rules must be "reasonable," but no hearings upon proposed regulations are required. Most of these laws deal with businesses in which sanitation is important.

Many licenses (as for example, poultry dealers in Illinois and Indiana) are issued upon application and payment of a license fee. Once having obtained a license, however, the holder must conduct his business in accordance with the regulations found in the law and the regulations issued by the license authority. He must also keep a full record of all transactions—subject to the inspection of the license authority. Failure to observe these regulations makes the license subject to revocation. Here again the laws fail to provide for a hearing before the administrative regulations are adopted.

Finally, there are at least fifty callings in which the statute provides that the requirements for a license shall be prescribed by the license authority,[17] and sixteen callings for which licenses are issued "in the discretion" of the license authority.[18] We

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breeders in California, Kansas, New York and Ohio; deer and elk raisers in Maryland; hospitals for the insane in California, Kansas, Maryland, New Jersey, New York and Oregon; hotels in Arkansas, Kansas, North Carolina, Ohio and Wisconsin; lodging houses in Kansas; restaurants in Arkansas, Kansas, Ohio and Wisconsin; rooming houses in Arkansas and Pennsylvania; tenement houses in Pennsylvania; ordinaries in Maryland; slaughter houses in California, Massachusetts, New Jersey, North Carolina and Pennsylvania; tenement houses permitting manufacture of goods in them in New York; and theatre buildings in New Jersey and Pennsylvania. Other businesses regulated by license laws which undertake to set up standards for the conduct of the business are business colleges in Kansas; horse races in Illinois, Maryland and New York; employment agencies in California and Illinios; steamboat companies in Massachusetts; and tenement house manufacturers in Maryland, Massachusetts, New Jersey and Wiconsin.

[17]A partial list includes automobile dealers in Massachusetts; auto camps in Maine; auto headlight adjusting stations in Oregon, Washington and Wisconsin; auto headlight adjusters in Washington and Oregon; aviators in Arkansas, Kansas, Massachusetts and Pennsylvania; barber colleges in Illinois; and cream-testers in Maine, Massachusetts, New Hampshire, New Jersey, Oregon and Virginia.

[18]These are agricultural fair amusements in North Carolina; billiard halls in Kansas, Massachusetts, New Hampshire, Washington and Pennsylvania; child caring and placing agencies in New York, Oregon and Wisconsin; dance halls in Kansas (in townships) and Washington; deadly weapons' manufacturers and wholesalers in New Jersey (issued if "not dangerous to the public safety"); dispensaries in Massachusetts and New York; eating places furnishing entertainments for their guests in Massachusetts; commercial fishermen in Maryland and Massachusetts; game camp keepers in

conclude that in these cases the legislature despaired of even attempting to determine the prerequisites to the satisfactory conduct of the restricted callings.

Revocation

At the beginning of this paper the point was made that a license law is a measure enacted under the police power to impose standards of conduct which are in advance of those imposed by the common law. Now the courts have held that the right to practice a legitimately licensed calling is not a property right, but a privilege of statutory creation only.[19] Since this is true, it is possible to introduce provisions for the revocation of licenses by administrative authorities as an added legal sanction for the enforcement of these advanced standards of conduct. Upon examining 1,124 license provisions it was found that 750 of them, or two-thirds of the laws contained this provision.[20] The majority of the nonrevocable licenses are annual licenses, and so are subject to a refusal to renew by the licensing authority.

Since the power to revoke means the power to deny the right (or privilege) of a person to engage in the pursuit of this livelihood, it is interesting to know what protection (if any) is afforded the licensee against unjust and arbitrary acts of the administrative officers which enjoy this power.

The first query then is whether or not the licensee is given notice of the charges against him and an opportunity to be heard in his defense. The majority of the laws, while not expressly denying the right of notice and hearing do not at least provide

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Maine; insurance agents in Arkansas and New York; insurance brokers in New York (but courts refused to interpret law as giving the insurance commission this power); labor employment agencies in Wisconsin (here license may be refused if in opinion of license authority there are a sufficient number of agencies licensed); life insurance advisers in Ohio; maternity hospitals in Oregon (here authorities must find hospital "necessary"); motor vehicles for hire in municipalities in Massachusetts; and public weighers in New Hampshire.

[19]There are some exceptions to this rule in cases where the courts have held certain licenses to be assignable or transferrable, in which case the license takes on the qualities of property, and thus is protected by the due process clause.

[20]By the number 1,124 we do not mean that there were that many laws, but that there were that many kinds of licenses provided for. Thus California licenses both real estate brokers and their agents in one law. That law would then account for two of the 1,124 license provisions.

for it. Such omission is hard to justify. In interpreting such laws there are cases which hold that licenses may be revoked "with or without notice to the licensee, if statutory authority and conditions be pursued,"[21] but the majority rule is that in the case of the revocation of a license other than a liquor license, the courts insist that the person whose license is to be revoked must have a formal hearing.[22] In arriving at this rule the courts are wont to talk much about revocation proceedings in which a formal hearing has not been granted as being a denial of due process of law, but a close analysis reveals that in most instances, at least, the court is merely reading the requirements of notice and hearing into the statute.[23]

The grounds for revocation set out in the law furnish us with the standards of conduct which have been enacted for the restricted profession. These standards, however, are almost uniformly vague. With few exceptions we find that the grounds for revocation are: incompetency, fraud, knowingly deceptive advertising, and dishonest, unprofessional or dishonorable conduct—or phrases to this effect. Six hundred and twenty-nine or eighty-four per cent of the seven hundred and fifty licenses which are revocable contain such phrases. Manifestly, such laws leave much to the discretion of the administrative (license) authorities.

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[21]*Wallace v. Reno* (1905) 27 Nev. 71, 73 p. 758, 103 A.S.R. 746, 63 L.R.A. 337 (Liquor Dealers). Other cases with similar holdings are: *Commonwealth v. Knisley*, 133 Mass. 579; *State v. Clark* (1916) Tex. Ct. App. 187 S. W. 760; *State v. Nabels* 187 S. W. 784 (Pool Tables) with *contra St. v. Town of Clendarnin* (W. Va.) 115 S. E. 583; *People ex rel Ritter v. Wallace* (1914) 160 App. Div. 787, 145 N.Y.S. 1041 (Dance Halls); *Brown v. Stubbs* (1916) 128 Md. 129 (Moving Picture Houses); *People ex rel Schwab v. Grant* (1891) 126 N. Y. 473, 27 N. E. 964 (Auctioneers).

[22]See Goodnow, "Private Rights and Administrative Discretion" in 183 *Central Law Journal* 165 (1916).

[23]To this effect see *State v. Schultz*, 11 Mont. 429, 28 p. 643 (Physicians); *St. ex rel Powell v. St. Medical Exam. Bd.*, (1884) 32 Minn. 324, 50 Am. Rep. 575, 20 N. W. 238; *Cofman v. Oousterhous* (1918) 40 N. D. 390, 168 N. W. 824 (Cream Stations); and *People ex rel Levy Dairy Co. v. Wilson* (1917) 179 App. Div. 416, 166 N. Y. Supp. 211 (Milk Sellers). The only cases which the writer was able to find where the court went so far as to declare unconstitutional statutory provisions for the revocation of licenses which do not provide for notice and hearing are: *Riley v. Wright* (Ga. 1912) 107 S. E. 857 (Insurance Brokers); *Mott v. Ga. St. Bd. of Optometry* (1918) 148 Ga. 55, 95 S. E. 867; *Northern Cedar Co. v. French* (1924) 131 Wash. 394, 230 p. 837 (Agricultural Commission Merchants).

As guides to either the license authorities or to the persons affected by the laws, they are no standards at all. It should be noted, however, that in the case of the professions which have been regulated for a relatively longer period of time, the laws are becoming more and more definite in their revocation provisions. This is especially true of the laws regulating medicine and law. A study of judicial interpretations of these clauses offers little more than further confusion. The statutes have not been worded alike, and the courts have varied in their reaction to similar provisions and turns of phrasing. Most of the courts are impressed by the fact that the power to revoke must be lodged somewhere, and that the legislature cannot lay down mechanical rules to cover all situations where it may be advisable to revoke. They have, therefore, permitted more or less vague standards both for the qualifications of a license, and for the circumstances under which a license may be revoked.

A question which has not yet been determined is raised by the Arkansas statute licensing chiropractors. We there read, "Said board shall have the authority to revoke the license of any person practicing chiropractic . . . , who has not been convicted in this state or elsewhere for the commission of any crime against the penal laws of any state or the United States Government."[24] Obviously no board would attempt to enforce this provision. But the question which remains unanswered is: could this provision be used as a defense by a licensee who had in fact carried out the mandate of the law and for which act the board thereupon undertook to revoke his license?

In the case of one hundred and twenty-four other licenses, the laws are even more unsatisfactory. In their case, the legislature has been content to make a license revocable for "misconduct," "for cause," "for just cause," "if the public interest demands," "at their (the license authority) pleasure," "at their discretion" or similar phrases.

Finally, in a few instances (twenty-five laws) the revocation of a license by the administrative authorities is made a ministerial duty after conviction of violation of the law in court.

In conclusion, there remains the question of the extent to which parties adversely affected by decisions of the license authorities may appeal to the courts. If the question is one of jurisdiction,

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[24]Arkansas, 1921—Number 485, Sec. 2. Also see 1927 Supplement to Crawford and Moses Digest of the Statutes of Arkansas, Sec. 8273 b.

appeal may always be made. But if this is established, then we find that the courts will only review the decision where it is clearly contrary to the facts, or where there has been an abuse of discretion. Their reluctance is due to a fear that a contrary policy will open the gates to a flood of litigation. As to the license laws themselves, only one hundred and two license provisions (fourteen per cent) of the seven hundred and twenty-five licenses revocable at discretion of administrative authorities provide for court appeal. This low percentage is due in part to the fact that very few of the business licenses make any provision for appeal, but even the professional license laws are too frequently silent on this point.

Now and then, court review is confined to the law in the case. Thus, in the North Carolina real estate law and the Wisconsin architect's law it is provided that the findings of fact of the license authority shall be conclusive unless fraud is shown. In California the court is limited to a consideration of whether or not the real estate commission has abused his discretion.[25] A similar provision is also found in the California law licensing cleaning and dyeing establishments. The strongest provision is found in the California nurses' law where we read that "The Board (of Health) shall finally pass or reject all applicants, and its actions shall be final and conclusive and not subject to review by the court or any other authority."

We have now considered (1) the purpose and the scope of the license law; (2) some of the license requirements found in these laws; and (3) the revocation of licenses. There remains the matter of the administration of these laws. This, however, is a topic in itslf, and so will not be considered at this time.

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[25]In Virginia, on the contrary, it is provided that the licensee may demand a jury trial for deciding questions of fact.

THE EIGHTEENTH AMENDMENT AND CUBA

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When the Eighteenth Amendment and the Volstead law went into effect, rum-runners quickly took advantage of the proximity of Florida and the character of its coast to make Cuba the seat of a very lucrative piratical trade. From the protection of the territory or territorial waters of the Pearl of the Antilles liquor was smuggled into the United States in great quantities. However, as soon as it became apparent that this was to be the base for one of the major attacks the American Government quietly set to work to build up an effective defense by securing the coöperation of Cuban officials in its endeavor to curb smuggling.

At Havana General Crowder and the Secretary of the Treasury of the Island Republic arrived at an agreement by which the latter pledged himself to furnish the former with all the data and information about liquor exports from that country.[1] The exact date of this arrangement is unknown but it was probably made in 1922 or early in 1923, when the necessity for a loan that could only be floated in the United States gave the American Ambassador enough power in governmental circles at Havana to insist upon access to such sources of information as he might choose to utilize.[2] When the public learned of the agreement, late in 1923, a storm of criticism and protest developed in high political circles which struck a responsive chord in the Cuban press. Ambassador Crowder was charged with improper meddling in the internal affairs of the country whose hospitality he was enjoying. Attention was called to the alleged fact that there was no precedent for such an accord being put into operation without legislative approval in both countries. Furthermore, Cuban critics were exasperated by what they termed the lack of courtesy shown by the American government in going over the head of the Secretary for Foreign Affairs, to whom all matters concerning international relations should be submitted. It was said that the agreement was void because it violated the Cuban

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[1] *Literary Digest*, Jan. 12, 1924, quotes extracts from Cuban Press.

[2] Torriente, Cosme de la, "The Platt Amendment," *Foreign Affairs*, April, 1930, p. 365.

constitution, disregarded the Senate, and ignored the most elementary rules of international comity.[3]

Criticism was by no means confined to the northern colossus. The government at Havana was savagely assailed for assuming the role of a near-policeman for the United States, and was accused of going beyond all the limits required by the circumstances to help enforce in the Republic of Cuba a municipal law of the United States.[4] The Cuban President, however, sought to make political capital for himself out of the incident by posing as a champion of the nation's untrammeled independence. He endeavored to fasten the responsibility upon the Secretary of the Treasury and succeeded in creating an impression that undue pressure had been applied by Washington.

Secretary Hughes feared that a strong stand on the eve of the Pan-American Congress might injure the prestige of the United States and be prejudicial to its general conciliatory Hispanic American policy.[5] He therefore did not desire to see popular opinion in the island aroused by the *modus vivendi*. Some action was, nevertheless, necessary and an appeal was made to President Zayas to take steps designed to check consignments of liquor from Cuba in small boats destined for American consumption. But the astute Zayas had taken advantage of the soothing attitude of the new administration on the Potomac to shake off the restraining hand of General Crowder by raising the issue of "nationalism."[6] Consequently no acceptable regulation could be agreed upon. The indifferent pose of the authorities at Havana could not long be maintained, for, during the summer of 1923, under the fostering care of the Veterans and Patriots Association, smoldering discontent was being fashioned into a basis for armed revolt. Zayas turned imploringly to Washington for a statement that it would not support a revolution. No favorable assurance was received but when the outbreak came on April 30, 1924, support was given the constituted authorities.[7] An embargo was placed on the sale of munitions to the rebels while the constitutionalists were permitted to purchase equipment from the United States government itself. In gratitude or as a result of

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[3] *Literary Digest, op. cit.*
[4] *La Discusion* quoted in Literary Digest, *op. cit.*
[5] Chapman, *A History of the Cuban Republic*, 446.
[6] *Ibid.*
[7] *Ibid.*, Quoting Edward L. Conn in *Washington Post.*

irresistible pressure Zayas yielded to the American wishes and before the end of May an executive decree was issued which prohibited shipment of liquor from all Cuban ports, except cargoes carried by regularly established steamship lines, and then only when permits were obtained from the Treasury Department and bond posted for the delivery of the liquor to the destination marked on the clearance papers. The bonds were to be returned when the papers receipting the cargo at the point of destination were returned by the shipping company.[8]

For a time these measures seemed to afford the desired protection but they were regarded from the beginning at Washington as temporary expedients. They were, however, considered wise as long as the United States was endeavoring to procure the acceptance by the powerful maritime nations of the general principles later incorporated in the agreement with Great Britain, popularly known as the Twelve Mile Treaty. Upon the ratification of this treaty on March 21, 1924,[9] the State Department set to work to extend the principle by securing the adherence of other governments. Then too, it was convinced by this time that a binding engagement rather than an informal agreement would be the surest way to effect its object in Cuba. Therefore it was decided to send General Lincoln C. Andrews, Assistant Secretary of the Treasury in charge of Prohibition enforcement, to Havana to confer with Ambassador Crowder and local officials upon proper stipulations for a formal agreement designed to shut off the source of illicit liquor which was said to have made Florida one of the wettest portions of the country. To carry the plan into effect General Andrews and Assistant Solicitor Vallance, of the State Department, left Washington on the night of December 25, 1925, for Havana[10] where the general principles which their government wished embodied in a treaty were carefully explained.

The State Department was in earnest and a convention between the United States and Cuba for the prevention of smuggling intoxicating liquors was signed on March 4, 1926.[11] It followed closely the details of the Twelve Mile Treaty concluded with Great Britain on January 23, 1924. It opens with a declaration that the contracting parties desire to avoid difficulties which

[8] *New York Times*, May 30, 1924.
[9] *Treaty Series*, No. 685.
[10] *New York Times*, December 26, 1925.
[11] *Treaty Series*, No. 738.

might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages, and had decided to conclude a convention for that purpose. The first article declares that it is the firm intention of the parties to uphold the principle that three marine miles constitute the proper limits of territorial waters. The language is identical with that used in the treaty with Great Britain. Article II is also identical with the corresponding provision in the British treaty. In three numbered paragraphs Cuba agrees to raise no objection to the boarding of private vessels under her flag outside the limits of territorial waters and if there is reasonable cause for believing they have or are attempting to commit an offense against the American prohibition laws they might be seized and taken into port for adjudication. But the right conferred by this article was not to be exercised at a greater distance from the coast of the United States than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. Article III exempts liquor carried in Cuban bottoms under seal in American waters from the operation of the laws of the United States, in terms identical with those used in the British treaty.[12]

The first paragraph of Article IV provides that any claim in behalf of a Cuban vessel for compensation on the ground that it had suffered by the improper or unreasonable exercise of the rights conferred by Article III, should be referred for the joint consideration of two persons, one of whom should be nominated by each of the contracting parties. Effect was to be given to the recommendations contained in any such joint report. The only difference up to this point in this and the British agreement is the substitution of "convention" for "treaty." But here similarity in these two provisions ceases, for, in the Cuban case, if no report can be agreed upon, the claims are to be referred to the Permanent Court of Arbitration at The Hague as described in the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on October 18, 1907. The Arbitral Tribunal is to be constituted in accordance with Articles 59 and 87, and the proceedings are to be regulated by as much of Chapters III and IV as the Tribunal considers applicable. All sums of money awarded are to be paid within eighteen months. Each government is to bear its own expenses but the cost of the

[12] *Ibid.*

Tribunal is to be defrayed by a ratable deduction of the amount of the sum awarded, at a rate of five per cent or such lower rate as the governments might agree upon.[13] In the British treaty, if no joint report can be agreed upon, the claims are to be referred to the Claims Commission established under the provisions of the agreement for the Settlement of Outstanding Pecuniary Claims, signed at Washington on August 18, 1910.[14]

Modification or abrogation is provided for in Article V in language identical with that used in the British treaty except that in every instance save one this document is referred to as a "convention" whereas the other is a "treaty." Article VI provides that in the event of either signatory being prevented by judicial decision or legislative action from giving full effect to the stipulations the whole lapses. This was taken bodily from the British treaty where it was incorporated to obviate the fear in London that the Supreme Court would hold that a treaty could not confer upon any foreign country the privilege of bringing liquor even under seal into the United States. The statement regarding the method of ratification in the convention was an improvement over that in the treaty. In the latter, it was said that ratification should be by the President with the consent of the Senate and by His Britannic Majesty; in the former, ratification was to be in accordance with the respective laws of the signatories. The convention was done in two copies of the same text and legal force in the English and Spanish languages.

The formal negotiations were carried on between General Enoch H. Crowder, Ambassador Extraordinary and Plenipotentiary of the United States, and His Excellency Carlos Manuel de Cespedes, Secretary of State for Cuba. On March 4, 1926, the day the convention was signed, Secretary Cespedes wrote Ambassador Crowder that supplementary to the convention, the negotiations and correspondence which they had had on the subject, the Government of Cuba understood that in the event of the adherence of the United States to the Permanent Court of International Justice, the Government of the United States would not refuse to consider modifying the convention or concluding a separate agreement in which it would be stipulated that the claims mentioned in Article IV which were not settled in the manner

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[13] *Ibid.*, Article IV.

[14] *Treaty Series*, No. 685, Article IV.

indicated in the first paragraph would be submitted to the Permanent Court of International Justice instead of to the Permanent Court of Arbitration. The Secretary said his government also understood that each time a Cuban vessel was seized under the convention, authorities of the United States were obliged to communicate promptly a notification of what had occurred to the diplomatic representative of Cuba at Washington, giving the name of the vessel, the place of occurrence, and the circumstances of the case. A reply from the Ambassador under the same date confirmed the Cuban understanding as set forth in the Secretary's note.[15]

Ratification was advised by the Senate on April 9, 1926, and the President acted upon this sanction six days later. Cuba ratified on June 17, 1926, and ratifications were exchanged at Havana the following day. The convention was proclaimed by President Coolidge on June 19.

On the Potomac these terms were not regarded as sufficiently specific or comprehensive to effect all that was desired in Cuba. Therefore a method frequently employed to secure its object in Caribbean countries was reverted to by the United States. On March 11, 1926, one week after the above convention was signed but before ratification by the Senate in either country had been advised, the same negotiators concluded another agreement "For the Suppression of Smuggling Operations Between Their Respective Territories." This was a strange mixture of regulations for putting the original convention into effect and for "the prevention, discovery and punishment of violations of their respective laws, decrees or regulations with respect to the importation of narcotics, intoxicating liquors and other merchandise and the entry and departure of aliens."[16]

The most important part of the document is Article II in the following language: "The High Contracting Parties agree that clearance of shipments of merchandise by water, air, or land, from any of the ports of either country to a port of entry of the other country, shall be denied when such shipment comprises articles the importation of which is prohibited or restricted in the country to which such shipment is destined, unless in this last case there has been a compliance with the requisites demanded by the laws of both countries.

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[15] *Treaty Series*, No. 738, Addenda.
[16] *Treaty Series*, No. 739.

"The High Contracting Parties likewise bind themselves to prevent by all means possible, in accordance with the laws of their respective countries, the clearance of any vessel or vehicle laden with merchandise or having on board aliens destined to any port or place, when it is evident by reason of the tonnage, size, type of vessel, length of the voyage, perils or conditions of navigation or transportation, that it is impossible for it to transport said merchandise or persons to the place of destination mentioned in the request for clearance, or when the repetition of alleged accidents in prior voyages or the antecedents of or information concerning the vessel or vehicle furnished evidence that said merchandise or any part of the same or any person, whatever the ostensible point of destination thereof might be, is intended to be illegally introduced into the territory of the other High Contracting Party.

"When one of the High Contracting Parties gives notice to the other that it suspects that a specified vessel in a port of the other High Contracting Party, although ostensibly destined to a port in a third country, is likely to attempt to introduce unlawfully into its territory merchandise or persons whose entry is prohibited or restricted, the other High Contracting Party shall require from the master or person in charge of the vessel—in accordance with the laws in force in the respective countries and such additional arrangements as may be agreed upon and incorporated in regulations by the appropriate authorities of the High Contracting Parties—a bond to produce a duly authenticated landing certificate showing such merchandise or persons actually to have been discharged at the port for which the vessel cleared. If any such vessel failed to produce the certificate in proof of lawful discharge of such merchandise or persons or produces a false certificate or evidence, the bond shall be forfeited and thereafter for a period of five years the vessel shall be denied the right to enter or clear from any port of either of the High Contracting Parties with merchandise or persons of the same nature.[17]

To enforce these stipulations it was provided in Article V that each country would furnish the other, when requested, information concerning the transportation of cargoes or shipment of merchandise from the territory of one to the other. The names and activities of persons or vessels known or suspected of being engaged in the violation or the laws of the other were to be

[17] *Ibid.*, Article II.

supplied upon request. Article VI made it obligatory upon officials, whose duty it was to prevent or report the violations of the laws as soon as they received knowledge of preparations to smuggle or of illicit introduction, to do what they could to prevent it in the first case and to bring the matter to the attention of the proper authorities in their own countries in either of the two contingencies. The officials of each country were to notify the corresponding authorities of the other of the violation of the laws covered by the convention. They were likewise to furnish all information which they could gather bearing upon the facts and circumstances of the case. Article VII provided that customs and other administrative officers of the respective governments were upon request to be directed to attend as witnesses before the courts of the other country and to produce such available records or certified copies thereof as was considered essential to the trial of cases arising out of violations of the smuggling laws of the other signatory. The cost of transcripts, the transportation, maintenance, and other proper expenses involved in the attendance of witnesses were to be paid by the nation which requested them. The convention was to remain in force for one year at the expiration of which, if no notice was given by either party of a desire to terminate it, it was to continue in force until thirty days after either party gave notice of a wish for its termination.[18]

The convention was signed at Havana on March 11, 1926, approved by the Senate on April 16, and was ratified by the President four days later. Cuba ratified on June 17, ratifications were exchanged June 18, and the following day President Coolidge proclaimed the convention. The provisions of the agreement were fashioned in administrative circles at Washington. They represent the maximum for which this government has contended in negotiating anti-smuggling agreements to aid in the enforcement of the Eighteenth Amendment and the National Prohibition Act. The refusal of clearance for liquor cargoes was vainly pressed upon Canada, to the government of which it was explained that this would be the extent of America's desire that a foreign nation should go in refusing the use of its instrumentalities to persons engaged in breaking the laws of the United States. It was urged that the success of the measure in checking the introduction of illicit liquor from Cuba warranted its application elsewhere under

[18] *Treaty Series*, No. 739.

similar circumstances.[19] Nevertheless, it did not succeed in accomplishing the purpose for which it was designed and Havana was repeatedly urged to make the various regulations, decrees, and conventions effective.

But the Machado political regime is as nationalistic as its predecessors and resented the dependence upon the United States into which Cuba has fallen.[20] It refused to make satisfactory efforts to coöperate in tightening the restrictive measures against smuggling but early in 1927 a proposal was revived to amend the Cuban constitution; this provided for a single six-year term for the president. The same project was said to have been dropped in 1921 because of alleged opposition from the United States.[21] In its new form the measure provided for the prolongation, for two years, of the term of President Machado and many Cubans objected to this. In the spring of the same year the Pan-American Federation of Labor was diligently investigating conditions in the Island. The President of the organization insisted that under the Platt Amendment the United States was obliged to use its influence to maintain in the Island a government able and willing to protect the life and liberties of working men as well as property.[22] At the same time the resolution introduced in the Senate on April 17, 1928, by Senator Shipstead, calling for an investigation of the security of American rights and Cuban liberties, was in the making. This would have been sufficient to induce the government at Havana to be especially attentive to any whim on the Potomac.[23] But there were other and probably more weighty reasons for a show of cordiality. President Machado was making elaborate plans for his approaching visit to the United States and in the capitals of all the American republics arrangements were going forward for the meeting of the Pan-American Congress scheduled to meet in the Caribbean Metropolis the following year. Therefore on October 13, 1927, the President took steps to clamp the lid on contraband liquor smuggled from Cuba to Florida by initiating measures to reorganize the administration so the laws against smuggling

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[19] *Press Release*, May 15, 1929.

[20] *Foreign Affairs*, January, 1928, p. 231.

[21] *Cuba and the Platt Amendment*, Foreign Policy Association, Apr. 17, 1929.

[22] *Ibid.*, p. 46.

[23] *Senate Resolution* 201, 70th Cong. 1 Ses.

could be enforced. He directed the Navy Department to order a submarine chaser to be on guard and ready to sail at a moment's notice in pursuit of any craft that had or might incur the suspicion of the government of either Cuba or the United States.[24]

Theoretically Washington considers that the present restrictive measures are practically perfect and have amply justified its action in Cuba. That the illicit flow of spirituous liquors for beverage purposes has not been entirely dried up is recognized but no further legal enactment is desired. What is constantly insisted upon is an honest endeavor to enforce the regulations that now exist.

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[24]Associated Press Dispatch from Havana, October 13, 1927, *New York Times*, October 14, 1927.

UNREST, CULTURE CONTACT, AND RELEASE DURING THE MIDDLE AGES AND THE RENAISSANCE

BY HOWARD BECKER

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The period from the Crusades to the Renaissance was peculiarly rich in forms of population movement that brought about culture contact—pilgrimages, peregrinations of wandering scholars, voyages of exploration, mass migrations, missionary enterprises, expeditions of religio-political conquest, and trading journeys. Only the culture contacts mediated by the latter two—the Crusades and their associated trade with the Levant—can be considered here.

The two types of movement mentioned were of course inextricably intertwined. For example, the Venetians and others transported Cursaders to Asia Minor and brought back Levantine goods; warfare and commerce ran their courses side by side. In spite of this fact, however, it seems likely that the "adventurous folly" of the Crusades was the prior agency in effectively acquainting the Western world with the rich store of goods the East had to offer, with the seductive mores of the infidel, and with the various Christian and near-Christian heresies flourishing in Asia Minor. Witness the well-known fact that the Templars were "infected" with Gnostic and similar doctrines picked up during their long residence abroad, which heresies, along with other things, they diligently spread throughout Christendom on their return. The Commercial Revolution, on the other hand, did not get well under way until the early fifteenth century, although it must be admitted that when it did the trickle of culture contact started by the Crusades broadened into a flood, and Europe's wall of isolation crumbled down.

Then came release, for out through the breaches burst the heaven-storming Titans of the Renaissance, "individuals cut loose from the laws of common humanity," to be sure—but what individuals! One can understand, if not sympathize with, Nietzsche's rapture at the vision of "Cesare Borgia as Pope"; men of mighty energy, astounding versatility, and appalling wickedness appear on the scene, men *released* from the bonds of "The Thirteenth, Greatest of Centuries." Culture contact had done its work.

Culture contact, however, cannot be taken for granted; it does not "just happen," and it must be accounted for in the specific configuration in which it occurs. In some instances mere geographical proximity is a sufficient explanation; in others, more far-reaching considerations are involved. The latter is the case in regard to the extensive culture contacts of the period under discussion; geographical proximity affords no explanation whatever, and the phenomenon of *unrest* must be brought into the foreground.

Now, how is unrest generated, and how did it produce culture contact in the period considered?

To begin with, unrest is present in some degree in any culture. Someone has said that "walking is but a process of falling forward that is continually interrupted"; Thomas' and Znaniecki's well-known generalization might be cast in a similar form: "Social stability is but a process of continually reorganizing a continually disorganizing plurality pattern."[1] Even when an ideology, with its concomitant mores and institutions, has slowly brought order out of chaos and become dominant, as did the Christian Epic among many of the European peoples during the eighth, ninth, and tenth centuries, subversive forces are forever at work. If the dominance of the ideology is to be maintained, such forces must either be eliminated or the tension and unrest resulting from their intrusion must be drained off by providing outlets.

These outlets may merely dissipate the tension and thereby temporarily lessen the unrest; such dissipation frequently finds a vent in "the crowd that dances," to use Park's graphic phrase. On the other hand, channels for tension-energy are often found in "the crowd that acts" (also a phrase of Park's coining). In

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[1]"Social disorganization is not an exceptional phenomenon limited to certain periods or certain societies; some of it is found always and everywhere, since always and everywhere there are individual cases of breaking social rules, cases which exercise some disorganizing influence on group institutions and, if not counteracted, are apt to multiply and to lead to a complete decay of the latter. But during periods of social stability this continuous incipient disorganization is continuously neutralized by such activities of the group as reinforce with the help of social sanctions the power of existing rules. The stability of group institutions is thus simply a dynamic equilibrium of processes of disorganization and *reorganization*" (Thomas and Znaniecki, *The Polish Peasant in Europe and America* [New York: Knopf, 1927] pp. 1129–1130.)

the first type, tension seems to find an outlet in behavior predominantly involving the autonomic or sympathetic nervous system; in the second, the central nervous system appears to be more directly involved. The Dancing Mania of the Middle Ages, the Great Revival of 1800, and the Flagellant epidemic are examples of the first; the First and Second Crusades, the Klondike rush, and the storming of the Bastille afford instances of the second.[2] To use terms that must not be taken too seriously, the one is introverted behavior, the other is extroverted; in either type of activity tension-energy is translated into physical movement and unrest is lessened.

In order to understand the application of the above statements to the period being discussed, it is necessary to refer to an earlier era. At the end of the Dark Ages Europe was as nearly static (in the sense of lack of cultural innovation) as it has ever been before or since. Isolation prevailed, as the accounts of voyages and attitudes toward other peoples show; by the ninth and tenth centuries religious sanctions had already attached themselves to and fixated much social behavior. A sort of isolated sacred community arose Phoenix-like from the holocaust of Latinized and Germanic cultures; Western Christendom emerged from the welter of the Migrations with a relatively high degree of basic cultural unity. In other words, the period of social disorganization, release, and individuation that marked the Merovingian and early Carolingian regimes in Central Europe was followed by a period of social reorganization, inhibition, and reglementation[3]

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[2] "This phenomenon of migration, however, has also an inner cause whose consequence varies according to time and the nature of men: this is a *complex* activating spring made up of the desire for change, the hope of betterment, the longing for adventure, the attraction of the unknown—*unrest* in its etymological sense, which, if it entails mishaps, at the same time is the very spur to progress. What we divine for prehistory, history itself actually demonstrates to us in those periods of feverish exaltation when whole human groups, with material ends or ideals in view, tear themselves up by the roots—temporarily, at all events—or fling themselves into some quest of the Golden Fleece, search for a Holy Land, or even a New World" (E. Pittard, *Race and History* [New York: Knopf, 1925] pp. xiv–xv).

[3] "The entire process of disorganization is only temporary. For social disintegration in whatever form never goes as far as to destroy entirely in the group the demand for a regulated, organized, and harmonious social life. Thus, social disintegration is bound to rouse not only reflective attention of the group, but also, among some of its members at least, conscious efforts to remedy it" (Thomas and Znaniecki, *op. cit.*, p. 1212).

that even the collapse of the empire of Charlemagne did not seriously interrupt.

Many factors were operative in bringing about this reorganization, but space forbids their discussion. Although but partial, although by no means as thorough-going as the eventual consolidation of Christendom in the thirteenth century, the degree of reorganization effected by these factors even in the earlier period was considerable. In fact, so many accustomed outlets were dammed up with such relative suddenness that tension and its associated unrest began *again* to become rife.[4] The hard-won dynamic equilibrium effected by reorganization was soon threatened by an increase in processes of disorganization; the hold of the sacred community upon its newer, less Latinized members weakened considerably between the middle and the end of the tenth century.

To make matters worse, the eleventh century was visited by a series of terrible famines—1005, 1016, 1094. Of all the factors that are associated with tension and unrest, hunger seems to be the most important, as Dashiell's experiments on various types of animal "drives" or urges seem to indicate; hungry animals manifest about 60% more restless activity than those activated by any other need.[5] During the first two of the famine periods listed above, aimless wandering became so prevalent that it took on the aspect of genuine collective behavior; tension and unrest carried thousands of hapless souls up hill and down dale, looking for they knew not what, just as they did in the England of More's time. The partially reorganized social order was seriously threatened by this activity, at once symptom and cause of dis-

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[4]"With the progress of time, any established social order tends to become stiff and rigid. Its institutions ossify. The elemental human wishes for new experience, security, recognition, and response are thwarted. Opportunities for their realization become less, and general restlessness results" (L. P. Edwards, *The Natural History of Revolution* [Chicago: University of Chicago Press, 1926] p. 23, italics ours).

[5]J. F. Dashiell, *Journal of Comparative Psychology*, V. (June, 1925), 205–208.

organization,[6] and every effort was made to stop wandering,[7] but even the death penalty seems to have been of little avail. The "milling of the human herd," to use Park's phrase, went on with the inevitability of the natural process it was. Its earlier extreme forms soon abated, to be sure, but all through the eleventh century we find traces of its persistent *disorganizing and preparatory* influence.[8]

Further, all Europe was in a state of turmoil because of political and ecclesiastical grievances. As Prutz has said:

> Everywhere in the Occident, turn where one might, discontent and demand for amelioration or at least change, of existing conditions prevailed; everywhere the urge to escape from the unendurable present by means of one bold stroke made itself felt.[9]

Once more, pestilence contributed its share to the prevailing unrest. Hecker has pointed out the relation between the Black Death and the Dancing Mania of the fourteenth century; it is not without significance that in 1094, the year before *"Dieu le vult!"* greeted Urban's announcement of the First Crusade, a plague of unknown variety raged from Flanders to Bohemia.

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[6]"The feeling of restlessness is at first very vague and indefinite. . . . All the effort is in the direction of satisfying it by mere movement or purposeless activity. There is an increase of travel, for the *relationship between travel and unrest is reciprocal. Unrest increases travel and travel increases unrest"* (Edwards, *loc. cit.).*

[7]Although referring to occurrences of a later date, the following excerpt is of interest here:

"Probably the first step taken by the state to meet social problems was to pass laws that people must not wander. They had to remain in their own village, and strangers were only tolerated or admitted on permit . . . we have ample evidence that most social problems were identified with . . . (wandering)" (Anderson and Lindeman, *Urban Sociology* [New York: Knopf, 1928] p. 325).

[8]"The most elementary form of collective behavior seems to be what is ordinarily referred to as 'social unrest.' Unrest in the individual becomes social when it is, or seems to be, transmitted from one individual to another, but more particularly when it produces something akin to the *milling process* in the herd, so that the manifestations of discontent in A communicated to B, and from B reflected back to A, produce . . . (a) circular reaction. . . .

"The significance of social unrest is that it represents at once a breaking up of the established routine and a preparation for new collective action" (Park and Burgess, *Introduction to the Science of Sociology* [Chicago: University of Chicago Press, 1924] p. 866, italics ours).

[9]H. Prutz, *Kulturgeschichte der Kreuzzüge,* (Berlin; Mittler, 1883) p. 15.

The stricken populace perished in droves, and in the following year the disorganized survivors flung themselves into the swollen flood of the Peasants' Crusade. In other words, the "milling" became a "stampede" that partially passed over into a collective act with an over-determined symbol—the Holy Land.

The First and Second Crusades were of course not solely due to the particular influences named; several other "moments," to speak with the Germans, played their part. Nevertheless, the surprising extent to which the lower classes participated in the movement would be incomprehensible without taking the unrest generated by famine, discontent, and pestilence into account; the Holy Land became in a sense a place where all the ills of this world would be alleviated, an earthly Paradise, a symbol of escape. Further, plenary indulgence was promised to all who participated in the conquest of the heathens in possession of the sacred places of Christendom; the Crusades were thus a means of release for those restless persons, particularly in the ruling strata, who found even the partially reorganized world of the eleventh century too straitly confining—what wonder that everyone in Europe who was *loose,* morally and socially, plunged into the orgy of slaughter and pillage that broke out long before the real enemy was reached?[10]

The First Crusade resulted in the setting up of several Frankish States in Syria that endured for the better part of a century. As is usually the case, peaceful relations with the erstwhile foe were established,[11] and a flourishing trade in the goods they had

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[10]Much of the following is out-moded in terminology but is nevertheless relevant:

"We see frequently in states what physiologists call 'Atavism'—the return, in part, to the unstable nature of their barbarous ancestors. Such scenes of cruelty and horror as happened in the great French Revolution, and as happen, more or less, in every great riot, have always been said to bring out a secret and suppressed side of human nature; and we now see that they were the outbreak of inherited passions long repressed by fixed custom, but starting into life as soon as that repression was catastrophically removed, and when sudden choice was given. The irritability of mankind, too, is only part of their imperfect, transitory civilization and of their original savage nature. They could not look steadily to a given end for an hour in their pre-historic state; and even now, when excited or when suddenly and wholly thrown out of their old grooves, they can scarcely do so" (Walter Bagehot, Physics and Politics [London: 1872] p. 95).

[11]The following exaltation of conflict as a means toward commercial culture contact is a bit overdone, yet it stresses a point that is often neglected:

to offer sprang up along the borders of the Kingdom of Jerusalem and the principalities of Edessa, Antioch, and Tripoli.

The mixture of folkways and mores so often a source of social disorganization soon manifested itself as a result of this culture contact. Ernest Barker has thus described the process:

> The barons alternated between the extravagances of Western chivalry and the attractions of Eastern luxury: they returned from the field to divans with frescoed walls and floors of mosaic, Persian rugs and embroidered silk hangings. Their houses, at any rate those in the towns, had thus the characteristics of Moorish villas; and in them they lived a Moorish life. Their sideboards were covered with the copper and silver work of Eastern smiths and the confectioneries of Damascus. They dressed in flowing robes of silk, and their women wore oriental gauzes covered with sequins. Into these divans where figures of this kind moved to the music of Saracen instruments, there entered an inevitable voluptuousness and corruption of manners.[12]

This softening of a group of hardy conquerors as a result of culture contact soon had its inevitable consequences; the Frankish domains were recaptured by the Saracens, and an era of more or less continuous crusading ensued—indeed, conflict had never entirely ceased at any time from 1095 on.

In spite or because of this conflict, however, trade and peaceful intercourse continued; the expelled Franks who were forced to return to their native lands, and even those who returned from the early successes of the First Crusade, brought back with them needs and cravings that only goods from the Levant could fill. Their example and the real utility of some of their imported culture traits awakened a general demand for Levantine wares

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"Fast alle grossen Verbindungswege der Menschheit sind ursprünglich 'Kriegsfade'; dem Kriege folgte erst der Handel. Und dieser selbst, was war denn er zuerst!? Nichts anderes als Krieg. 'Krieg, Handel und Piraterie, dreieinig sind die, nicht, zu trennen! Keineswegs ein 'Händler,' sondern ein 'Handelnder' ist der älteste Vorfahr des Kaufmanns; nicht tauschen will er zunächst, sondern rauben . . . Der Tausch stellt sich dann allerdings ein, aber ganz unbeabsichtigt, insofern nämlich, als von beiden Seiten geraubt und dadurch unwillkurlich ein Ausgleich herbeigeführt wird. Indem man jedoch auf diesem Wege die Güter kennen lernt, die der andere erzeugt und besitzt, kommt es allmählich auch zu friedlichem Austausch; man wechselt souzusagen nun Güter aus wie sonst Gefangene, indem dabei die stillschweigende Voraussetzung gilt: man sei sich gleich an Macht, und verzichte daher besser auf den eigentlich vorher durchzufechtenden Kamp" (Max Jahns, V *Die Kriegskunst als Kunst* [Berlin: 1881] p. 71).

[12]Ernest Barker, art., "Crusades," *(Encyc. Brit.*, 14th ed., p. 782).

in Europe, and the Venetians, Genoese, and other Mediterranean traders reaped a rich harvest. The beliefs and theories of the hated infidel, his non-material culture, made some slight impress upon the West, particularly in the fields of chemistry and mathematics, but the field in which culture contact was really effective was the material. Soon we find the Italian trading peoples becoming marginal; they learned to tolerate the Moslem and then to imitate him; the fighting Crusaders found them but half-hearted allies during the latter part of the twelfth century and thereafter. They did not want to spoil their sources of supply; having worked out a *modus vivendi* with the foes of Christendom, they were not anxious to have it disrupted by fanatical Christians. A little conflict when trading interests were threatened was all well and good, but conflict for the general weal of the sacred community of the West—pah!

Now this sacred community, with the marginal exceptions noted above, had achieved a notable degree of integration by the thirteenth century. The release afforded by the Crusades had drained off some of the restless elements, and the in-group feeling aroused by the struggle with the infidel had welded much of Christendom into a body presenting a united front to the common foe in spite of internal dissension. The power of the Church steadily increased, the era of cathedral-building set in, and the Franciscan reforms quieted unrest for a time. Nevertheless, the very processes which made the unity of the thirteenth century possible contained the seeds of disorganization, for as we have seen, the Crusades brought about culture contact with the East, and thus made the point of climax the point of incipient disorganization as well.[13] Slowly the stream of Levantine goods and customs broadened into a torrent, the Commercial Revolution began, and the Italian city-states danced like their own stout carracks on the very crest of the advancing waves of secularism that have since flooded the modern world.[14] The accessible secular

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[13]"With the thirteenth century came the influx of the Eastern trade and the rise of the communes. Immediately the glory of the Gothic began to fade; by the reign of Saint Louis it had passed its prime, and under Philip the Fair it fell in full decline" (Brooks Adams, *The Law of Civilization and Decay* [New York: Macmillan, 1912], p. 379).

[14]"The original and now generally accepted thesis that the 'Commercial Revolution' rather than the 'Renaissance' or the 'Reformation' marked the dawn of the modern world has furnished the centre of orientation for the

society, made accessible by the Crusades[15] and secular by commerce,[16] began to take form and shape. The Middle Ages drew to a close; the Age of Faith gave way to the Age of Commerce and Discovery. Once again traditional ties were broken; once again men became "individuals cut loose from the laws of common humanity";[17] once again release supplanted inhibition.

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stimulating works of Abbott, Shepherd, Bolton, Bourne, Gillespie, and Cheyney" (H. E. Barnes, History, Its Rise and Development, *Encyc. Amer.*, p. 249).

[15]The following is an excellent summary of the general origins and influence of the Crusades:

". . . die Kreuzzüge nahmen wiederholt die Gestalt einer Massenwanderung an. In ganz Europe herrschten damals Fehde, Raub, Gewalttat, überall war der gemeine Mann in unerträglicher Lage. Erst die soziale Not, urteilt Hans Prutz, machte die Kreuzzüge zu einer Massenbewegung. Die Kreuzfahrer wurden frei von Leibeigenschaft, Schulden, Bann, und Strafe. Die Kirche reizte sogar durch Schilderung der zu erwartenden reichen Beute und der Schönheit der griechischen Frauen zur Teilnahme an. Dazu kam noch die ritterliche Lust nach Ruhm und Abenteurn, und gewiss auch viel echter Glaubenseifer.—Ein französischer Chronist schildert, wie die bauern überall Weib und Kind auf Wagen laden und alles verkaufen, um sich dem Kreuzzug anzuschliessen.—Seit dem 13. Jahrhundert vollzog sich ferner eine grosse Ruckwanderung der Franken nach dem Abenland.—Die bahnbrechende Wirkung der Kreuzzüge für unsere ganze moderne Kultur, die übertragung zahlloser geistiger und materieller Güter, die Aufwühlung und Befruchtung der Geister durch die Berührung von Morgen—und Abendland, die Erschütterung der Authorität der Kirche, das Aufkommen des Bürgertums usw. brauchen hier nicht geschildert zu werden" (Fr. Herz, "Die Wanderungen und ihre geschitliche Bedeutung" *Kölner Vierteljahrshefte für Soziologie*, VIII, 1, 1929, pp. 36–52).

[16]"Commerce presupposes the freedom of the individual to pursue his own profit, and commerce can take place only to the extent and degree that this freedom is permitted. Freedom of commerce is, however, limited on the one hand by the mores and on the other by formal law, so that the economic process takes place ordinarily within limitations that are defined by the cultural and the political processes. It is only where there is neither a cultural nor a political order that commerce is absolutely free" (Park and Burgess, *op. cit.*, p. 53).

And the Crusades and the Commercial Revolution did much to shatter the cultural and political orders of thirteenth-century Europe!

[17]"In this country [Italy] . . . where individuality of every sort obtained its highest development, we find instances of that ideal and absolute wickedness which delights in crimes for their own sake, and not as means to an end, or at any rate as means to ends for which our psychology has no means to measure.

Among these appalling figures we may first notice certain of the "Condottieri," such as Braccio di Montone, Tiberto Brandolino, and that Werner von Urslingen whose silver hauberk bore the inscription: 'The enemy of God,

The optimistic eighteenth-century philosophers wrote their fulsome screeds on progress and human perfectability during the period when man's mental horizon had just been immeasurably extended by the amazing scientific, philosophical, and literary activity of the preceding century, the century of Bacon, Harvey, Kepler, Galileo, Descartes, Pascal, Huyghens, Boyle, Newton, Locke, Spinoza, Leibniz, Cervantes, and Shakespeare. It is therefore highly probable that they had their own era of the Enlightenment in mind when they spoke of the energizing effect of release from traditional bonds; nevertheless, they might well have been speaking of the earlier period of the Italian Renaissance, for at no time set down in the historical record have the processes of release, individuation, and secularization been more manifest than in the age of the Medicis, the Borgias, Machiavelli, Cellini, Boccaccio, Petrarch, and Da Vinci.

Release from the bonds of the *milieu natale*, as Durkheim puts it, from the kinship group, from the isolated sacred community, does indeed sometimes strip men of large sections of their human nature, if by the latter term we mean the cultural conditioning that has overlaid and transformed the crude undifferentiated urges of the biological organism. Further, the resulting partial individuation (the process can never be complete) does often seem to be correlated with vice and crime of the most revolting sorts; "Progress is a terrible thing"—

> Er nennts Vernunft und brauchts allein
> Nur tierischer als jedes Tier zu sein . . . .
> In jeden Quark begrabt er seine Nase.
> —Goethe, *Faust*.[18]

But Goethe also pointed out that the human being frequently is in need of an external stimulus, an intrusive factor, if he is to realize his fullest capacities:

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of pity, and of mercy.' This class of men offers us some of the earliest instances of criminals deliberately repudiating every moral restraint" (Burckhardt, *op. cit.*, p. 453).

[18]He calls it Reason, uses it but
More bestial to be than any brute . . . .
He sees no filth but he must poke
his nose in't.
—Latham's translation.

Des Menschen Tätigkeit kann allzu leicht erschlaffen,
Er liebt sich bald die unbedingte Ruh;
Drum geb' ich gern ihm den Gesellen zu,
Der reizt und wirkt und muss als Teufel schaffen.
—Goethe, *Faust.*[19]

In other words, individuation frequently releases energies that otherwise would never come to their own;[20] as Whitehead says, "the great ages have been the unstable ages."[21] Men break with the code of their time, but they accomplish great things. The same point has been noted by Teggart:

> As a result of the breakdown of customary modes of action and of thought, the individual experiences a "release" from the restraints to which he has been subject . . . we hold ideas simply because nothing has occurred to disturb them; the fact is that . . . unless we encounter flaw or jar or change, nothing in us responds. [James asks] to what . . . do men owe their escape? and to what are improvements due, when they occur? In general terms, he says, the answer is plain: "Excitements, ideas, and efforts are what carry us over the dam." Ideas in particular he regards as notable stimuli for unlocking what would otherwise be unused reservoirs of individual initiative and energy. This effectiveness he ascribes to the fact, first, that ideas contradict other ideas and thus arouse critical

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[19]Man's efforts lightly flag, and seek too low a level.
Soon doth he pine for all-untrammelled sloth.
Wherefore a mate I give him, nothing loth,
Who spurs, and shapes and must create though Devil.
—Latham's translation.

[20]"It has been indicated that . . . breakdown . . . tended to release the individual from the domination of the group, and to create a situation in which personal initiative and self-assertion became possible. It has now to be pointed out that, while this release may be regarded as affecting primarily the submission of the individual to the mandatory authority of the group, essentially it opens for the individual the possibility of thinking for himself without reference to group precedent. The emergence of individuality, with its accompanying manifestations of personal initiative and self-assertion, is intimately associated with the beginnings of independent mental activity, of thinking which may lead the individual to question the validity of inherited group ideas" (F. J. Teggart, *The Processes of History*, p. 109).

"A civilization which cannot burst through its current abstractions is doomed to sterility after a very limited period of progress" (Alfred North Whitehead, *Science and the Modern World* [New York: Macmillan & Co., 1926], p. 86).

" . . . almost any idea which jogs you out of your current abstractions may be better than nothing" *(Ibid.*, p. 90).

[21]*Ibid.*, p. 299.

> activity, and second, that the new ideas which emerge as a result of this conflict unify us on a new plane and bring us to a significant enlargement of individual power.[22]

It is quite probable, in the light of the above, that the surprising achievements of the Renaissance were due, first, to the breakdown of the isolated sacred community effected by the Crusades and the ensuing trade with the Levant, with its resulting individuation, and second, to the conflict of ideas engendered by the flood of new material and non-material culture traits later brought in by the Age of Discovery, the Commercial Revolution, and the Revival of Learning.[23] The rise of the bourgeois class of course played a large part, but in a sense this was merely one aspect of

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[22]Teggart, *op. cit.*, pp. 156–158. Cf. Turgot's analysis:

" . . . Ce n'est pas l'erreur qui s'oppose aux progrès de la vérité. Ce sont la mollesse, l'entêtement, l'esprit de routine, toute ce qui porté a l'inaction.—Les progrès même des artes les plus pacifiques chez les anciens peuples de la Grece, et dans leurs républiques, étaient entrêmelés de guerres continuelles. On y etait comme les Juifs bâtissent le murs de Jérusalem d'une main, combattant de l'autre. Les esprits étaient toujours en activité, les courages toujours excités, les lumières y croissaient chaque jour" (Turgot, "Pensées et fragments," *OEuvres de Turgot*, Daire ed., p. 672).

[23]" . . . the thought of any people is most active when it is brought into contact with the thought of another, because each is apt to lose its variety and freedom of play when it has worked too long upon familiar lines and flowed too long in the channels it has deepened. Hence isolation retards progress, while intercourse quickens it.

"The great creative epochs have been those in which one people of natural vigor received an intellectual impulse from the ideas of another . . . " (James Bryce, *Essays and Addresses in War Time*, [Macmillan, 1918] pp. 84–102, as adapted and quoted in Park and Burgess, *op. cit.*, p. 988).

"The main, if not the only, general condition of mental and social development is that the individual or the group should come into contact with other individuals or other groups. The resulting clash of feelings, actions, ideas, customs and institutions is the great stimulus to change.

"It is an interesting fact that, as in the mental life of the individual, so in the social life of the group, a certain amount of conflict is the most general condition of constructive effort" (F. C. Bartlett, "Psychology of Culture Contact," *Encyc. Brit.* 13th ed.).

"The artist is hemmed in by the peculiar style of the art and the technique of his environment; the religious mind by current religious beliefs; the political leader by established political forms. Only when these are shaken by the impact of foreign ideas or by violent changes of culture owing to disturbing conditions is the opportunity given to the individual to establish new lines of thought that may give a new direction to cultural change" (Franz Boas, *Anthropology and Modern Life* [New York: Norton, 1928], pp. 162–163).

the Commercial Revolution. Older writers attributed to the renewed study of the Classics the greater part of the rapid increase in cultural complexity during the Renaissance period, but it is now quite generally admitted that the Revival of Learning appeared much too late for it to be regarded as antecedent to the great access of new culture traits so characteristic of the early Renaissance.

By and large, the period we have just discussed represents in striking form the phenomena correlated with unrest, culture contact, and release; no other era in European history affords quite so detailed and vivid a picture of what happens when a highly organized but relatively isolated culture is suddenly brought into new relationships with other cultures.[24] Only a few of the salient features have been sketched; and those, needless to say, somewhat superficially. The growth of urban centers, the decay of the feudal system, the ever-increasing extent of the market, the rise of a thorough-going money economy, the breakdown of the doctrine of Just Price, the appearance of the wandering Goliardi, the secularization of learning, the paganism of the Humanists, the Expansion of Europe—all these things should be considered if a complete analysis were to be given. For the purposes of the present paper, however, consideration of the culture contacts occasioned by movements issuing from unrest and culminating in the Crusades and their associated trade with the Levant is sufficient. Some insight into historical dynamics has perhaps resulted—that, at any rate, was and is the desideratum.

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[24]"Now the physical conditions of civilization are by no means those of the physical conditions of rude strength. Climate has something to do with them, soil something; seaboard more. In the mind, however, of the present writer, the prime impulse is given by the mutual contact of dissimilar populations with dissimilar wants. If so, civilization is the product of neither blood nor nationality. It is rather a result of the contact of more nationalities than one" (R. G. Latham, *Descriptive Ethnology* [London, 1859], II, 502).

"The juxtaposition . . . of varying and contrasting attitudes, ideas, and customs ever tends to break down traditional rut and to stimulate change. Culture contact thus appears as the veritable yeast of history, and to disregard it is to develop a blind-spot in one's historic vision, which cannot but prove fatal to any theory of historic development" (A. G. Goldenweiser, *Early Civilization* [New York: Knopf, 1922] p. 27.)

LONDON AND THIRTEENTH CENTURY ANTI-ROYAL METHODS

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Of that most formative period of English Constitutional History—the thirteenth century—a fundamental problem as yet unsolved is the acquisition by the anti-royalists of the idea of permanently organized resistance to the king. This apparently appeared first in the final clause of the Articles of the Barons, as a *forma securitatis*,[1] in the rather crude form of a committee of twenty-five to watch the king and to make war upon him if he did not live up to the provisions of the Articles. This expedient incorporated in Magna Carta was followed by other expedients, usual and unusual. Magna Carta was reissued in 1216 and 1217 and received the first of a long series of confirmations in 1225. Requiring in that year the confirmation in return for a grant the anti-royalists set another precedent of great importance. They threatened violators of the provisions of Magna Carta with excommunication. They also demanded and sometimes controlled the appointment of the great officers of the kingdom. Gradually their resistance took the form and expression of organization and resistance in Parliament. Opposition to the king apparently was canonized in the veneration of a number of popular saints who had opposed the king.[2]

The organization of Parliament as a politically self-conscious body was thus only one and not the earliest of the methods of anti-royal England. In personnel and competence the early English Parliaments did not differ much from the general run of mediaeval parliaments, and may well have been summoned by Henry III and Edward I to satisfy royal financial needs.[3] Yet

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[1] *Select Charters*, etc. ed. William Stubbs and revised by H. W. C. Davis (9th ed. Oxford, 1921), p. 290.

[2] Cf. the author's, "The Canonization of Opposition to the King in Angevin England," *Haskins Anniversary Essays* (Houghton Mifflin: Boston, 1929), pp. 279–290.

[3] On the subject of the causes for summoning mediaeval parliaments see Carl Stephenson, "Taxation and Representation in the Middle Ages," *ibid.*, pp. 291–312.

the English Parliament was almost alone in developing a permanent program of its own and a consciousness of its unity separate from and frequently antagonistic to the king. While the development of Parliament has assumed a very great importance because of its subsequent influence upon democratic history at its inception it stands with other expedients as a part of the anti-royal program.

Although several elements of the English population participated in the anti-royal movement, the barons seem to have been the most prominent. As far as can be detected the actual determination of policy was baronial even though several of the greatest leaders were bishops. The idea of a permanent group held to by a group of barons is so unusual in the Middle Ages that we are justified in enquiring whence came the idea. Did this idea spring spontaneously from the minds of the barons? It does not seem probable.

The expedients adopted by the anti-royalists seem too numerous and too suggestive of previous experience to have been developed in the baronial mind. These barons were not political theorists trying to evolve new and radical methods. Quite satisfied with the English system in general they wished to prevent abuses by their kings and were grasping for some hold upon their slippery sovereigns. Most of them were jurists trained in law based on precedent.[4] Imbued with the habit of mind of proceeding from similar cases to similar judgments it is probable that the anti-royal leaders consciously or unconsciously would base their plans upon methods already in existence which promised some hope of success.[5] Before assuming spontaneity on the part of the barons the contemporary English political organizations should be carefully scrutinized for possible models for imitation.

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[4]As Stubbs *(op. cit.,* p. 29) says, "a race of nobles springing out of the administrative houses." A glance through the accounts in the *Dictionary of National Biography* concerning the chief anti-royalists reveals most of them as justices at some time in their lives.

[5]The type of procedure is explained by a contemporary judge, Bratton, as follows, "Si autem aliqua nova et inconsueta emerserint, et quae prius non fuerint usitata in regno, si tamen similia evenerint per simile judicentur, cum bona sit occasio a similibus procedere ad similia. Si autem talia prius nunquam evenerint, et obscurum et difficile sit eorum judicium, tunc ponantur judicia usque ad magnam Curiam, ut ibi per consilium terminentur. *Select Charters,* p. 412.

In seeking a solution to the question of the source of anti-royal procedure certain axioms may be assumed. The problem is the usual one of detecting imitation for which the following rules are applicable. Imitators tend to repeat both phraseology and methods and thus provide clues of several types for identification of the imitated. Second, imitation assumes a time and place acquaintance: that there was an opportunity for imitation.[6] Third, and most important in the case of institutions, imitations assumes a purpose of reason for imitation. That is, it should be shown that imitation probably might have taken place. The imitated, for instance, has had a successful career which the imitator might desire to follow.[7] In judging probability of imitation absolute proof is possible only in the case of admitted imitation verified by existence of demonstrated imitation. At the other extreme imitation will seem impossible unless an opportunity for the imitation has existed. Assuming this satisfactory the probability of imitation increases rapidly with the cumulation of likenesses, especially if some of them are peculiar to the two.

Inasmuch as our problem is the detection of the source of an idea of organization the term used for their organization by the anti-royalists may offer a direct clue. In the case of the English anti-royalists the term is "commune." Chapter 61 of Magna Carta speaks of the *communa totius terre*, and the Provisions of Oxford include an oath for the *commun de Engleterre*.[8] As McKecknie has noted, this is highly suggestive:[9]

> Few words of medieval Latin offer a more tempting field to enquirers than this *communa*, which, with its English and French equivalents, holds the key to many problems of constitutional origins. The appearance in Magna Carta of a body described as a "commune," in conjunction with an oath of obediance to a revolutionary committee, suggests comparison with the form of civic organization known as the "sworn commune."

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[6]As a negative illustration it would be hard to prove that Japanese feudalism was an imitation of European, because few actual contacts existed.

[7]The careers must be somewhat parallel. We should not expect a man to imitate the career of an animal no matter how successful the latter.

[8]*Select Charters*, pp. 301 and 379 respectively. The Magna Carta expression is taken over from the Articles of the Barons, *ibid.*, p. 291.

[9]W. S. McKecknie, *Magna Carta*, etc. (Glasgow, 2nd ed., 1914), p. 471.

In 1215 the outstanding English organization called a "commune" was London.[10] This may be mere coincidence or perhaps *communa* was such a widely used term that its use was only normal.[11]

Of the political expedients the use of the oath and the charter was frequent enough. Yet the London and the anti-royalist use of them had certain peculiar features in common. Unlike the usual perpendicular feudal oath, the oaths of the "commune of London" (1194) and of *le commun de Engleterre* (1258) are much alike in their insistence upon lateral unity and justice.[12] The oath of the twenty-four of London (1204) like that of the twenty-four of the anti-royal forces (1258) lays a large emphasis upon justice uninfluenced by gift or reward.[13]

While the charter also was a very common expedient, the circumstances in the history of the London charters and of Magna Carta are peculiarly similar. London's struggles, like those of anti-royal England, were frequently concerned with charters defining privileges which the king did not always wish to grant. Although each English sovereign since the Conquest had taken oaths at his accession and several had granted charters of liberties, each had done it largely of his own volition to a group conscious of its unity under him but not conscious of a common unity against him. Nearly all of the kings had also given charters to London: of these the most valued was the charter of Henry I,[14]

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[10]The question of whether or not London fulfilled the technical details of the "sworn commune" is not a matter of importance here.

[11]On the widespread use of the term see A. B. White, "Was there a common council before Parliament?" *American Historical Review*, xxv, 11, 14 (1919).

[12]For the London oath, see Round, *The Commune of London*, etc. (Westminster, 1899), p. 235, or William Page, *London, Its Origin and Early Development* (London, 1923), p. 281: in Stubbs *Select Charters*, etc. p. 245 it is abbreviated. For the other oath see *ibid.*, p. 379. As an example of the feudal oath see the oath of John to the Pope, *ibid.*, p. 280.

[13]*Ibid.*, p. 312 and p. 385 respectively. The forms of other oaths of the period are not known to be extant. London took an oath to expel the Empress in 1141 (Page, *op. cit.*, p. 91 quoting Florence of Worcester, *anno* 1141, William of Malmesbury, ii, 578, *Rolls Series*, and *Gesta Stephani*, i, 78.) and the barons took aoths against the king both in 1214 and 1242 (Cf. McKecknie, *op. cit.*, p. 32, *Select Charters*, pp. 273 and 326).

[14]*De Antiquis Legibus Liber*, ed. T. Stapleton (London, 1846, Camden Society), p. 19 (1252) Eodem tempore confirmavit Rex per novam cartam suam civibus Londoniarum omnes libertates suas, leges et consuetudines, et quas etiam habuerunt tempore Regis Henrici primi, usitatis et non usitatis.

as was the case with the realm also. Magna Carta is apparently the first royal charter of liberties in which the king agrees to remedy his own abuses. It is thus the first to resemble the charter of London in this particular. Like London's charter of 1215, Magna Carta was secured not at the beginning of John's reign but at a time when the king found it necessary or advisable to grant concessions.[15]

Magna Carta also resembles the London charters in appearance. Maitland has said that Magna Carta was "in form just like an ordinary borough charter."[16] Like an ordinary borough charter or London charter, Magna Carta was to be maintained partially by confirmations, confirmations usually purchased from the king.[17] The first confirmation of Magna Carta and the Charter of the Forest in return for money occurs in 1225.[18] A second method of maintaining Magna Carta secured by the anti-royalists was to have the clergy threaten its violators with excommunication.[19] This placing of a religious sanction upon a document largely political is paralleled in a London suggestion that all who would violate their civic oath be excommunicate.[20]

The chief reliance of the anti-royal forces both in 1215 and in 1258 was a committee of barons to watch the king, of twenty-five upon the first occasion and of twenty-four the second. London's leaders were a group of similar size.[21] In the case of both the anti-royal forces and of London the group at large swore to obey the committee. A more satisfactory method, however, was to control royal officials, a procedure akin to ministerial responsibility. With London this apparently began in the time of Henry I by securing the right to elect the city justiciar and

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[15]On London's persistent campaign to secure charters see J. H. Round, *The Commune of London*, pp. 223–234. Cf. also the alleged London program of about 1215, *Eng. Hist. Rev.*, xvii, 716 (1902).

[16]Pollock and Maitland, *The History of English Law*, etc. (Cambridge: 2d ed. 1898), I, 658.

[17]Page, *Its Origin and Early Development*, p. 119: *De Antiquis Legibus Liber*, p. 19, are but two instances.

[18]*Select Charters*, p. 349.

[19]McKecknie, *Magna Carta*, p. 158.

[20]*Eng. Hist. Rev.* xvii, 728 (1920), "Item per omnes ecclesias in civitate excommunicentur qui scienter et prudenter sacramenta sua infrinxeri(n)t."

[21]Cf. Round, *The Commune of London*, Page, *London*, etc. p. 281ff.: M. Bateson, "A London Municipal Collection of the Reign of John," *Eng. Hist. Rev.* xviii (1902).

sheriffs.[22] It continued with the securing of mayor and commune and their confirmation.[23] After displacing Longchamp in 1191 and sharing in the government during the minority of Henry III, the Great Council chose Raph Neville as chancellor and kept him in this position despite the king's desire to dismiss him.[24] The anti-royalists followed up this success by demanding a voice in the election of both chancellor and justiciar, finally triumphing in 1258 when provision was made for annually elected officers.[25]

In one other particular a similarity exists. The greater barons of the kingdom were the leading members of the great council and the greater barons of London were leaders in the folkmoot or *communa* of London.[26] Both assemblies usually met three times a year and both were, as Maitland has described Parliament, "rather an act than a body of persons."[27] Both assembled to counsel those in authority but both developed aggressive of their own.[28] While the procedure of the London assembly is none too clear and the actions of a city meeting differ from a country wide assembly, there exists a resemblance — sufficient, it seems, to justify the conjecture that the author of the twelfth chapter of Magna Carta had such a parallel in mind. That is, as no aid or scutage may be taken from the realm without the consent of the common council of the realm, so no aid shall be taken from London without the consent of the city assembly. In other words London has a right to bargain with the king about its aids.[29]

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[22]*Select Charters*, p. 129.

[23]M. Weinbaum, *Verfassungsgeschichte Londons* has an entire chapter on this.

[24]Matthew Paris, *Chronica Majora*, iii, 74, 364 (Rolls Series).

[25]William Stubbs, *The Constitutional History of England* (Oxford, 3d ed. 1883), ii, 54, 63, 66, 67, 69. It is possibly significant that the sheriffs are likewise to be elected annually according to the London precedent *(Select Charters*, 381–386).

[26]This identification is based upon the following statement of Fitzthedmar *(De Antiquis Legibus Liber*, p. 35), "Sed Rex de hoc non contentus, precepit Vicecomitibus, ut in crastino fecissent convenire Folkesmote ad crucem Sancti Pauli, ubi missurus erat Johannes Maunsel, et alii de consilio sue ad inquirendum a Communa, si talis esset consuetudo illorum. Cf. Weinbaum, *Verfassungsgeschichte Londons*, p. 98.

[27]*Memorando de Parlamento*, m. lxvii and note.

[28]*De Antiquis Legibus Liber, passim.*

[29]Cf. McKecknie, *Magna Carta*, pp. 237–238 for a statement of the difficulties of the two interpretations thus far presented, (1) that the London aids should be reasonable and (2) that London aids should be levied only with the assent of the common council of the realm. A factor in the

More important than the many expedients is the fact that London possessed the idea of permanently organized resistance to the king and tried to work out a program of its own into political reality. That the anti-royalists acquired the same idea and also used a number of the expedients developed by London deserves attention. The effect of the accumulation of similarities is striking even if a number of them may not be pressed very far. At this point we may well ask what evidence exists which indicates whether London could and did influence the action of the anti-royalists. As we have seen, London's actions preceded those of anti-royal England so that there is no time difficulty to obstruct the theory of imitation. Likewise the position of London at the center of English life removes the place difficulty.

Even before 1215 London's success was such as to warrant imitation. Although as Richard de Devizes states in an oft-quoted and striking passage, neither Richard I nor Henry II would have allowed to become a commune for even an infinite sum, London actually acquired this right in 1193.[30] This achievement occurred before the eyes and with the permission of the king's brother and "all the bishops, earls, and barons of the kingdom." It was an astonishing object lesson and not the only one of London's power and methods. Under Stephen it had been alleged that London claimed the right to choose the king.[31] In 1215 and 1216, probably

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interpretation is the need of explaining why the application of this ambiguous sentence to London and certain other cities in the Articles of the Barons (chap. 32) is restricted to London alone in Magna Carta.

If all it means is that aids should be reasonable, the clause is too innocuous to give the alteration any point. The Petition of Nine Heads (McKecknie, p. 236: *Eng. Hist. Rev.* xvii, 726) also shows that London wanted a particular method rather than a specification of reasonability. The second interpretation implies a radical change in the royal practice of assessing aids: too radical for Magna Carta, which, although revolutionary in its means of forcing the king to live up to certain practices, is rather conservative with respect to the practices themselves. While it may be true that the Londoners wished a mutual assent of their own and of the council of the realm since their clause reads "De omnibus taillagiis delendis nisi per communem assensum regni et civitatis," their own assent was primary and that of the realm secondary, unless we assume that London was throwing over its century old policy of self-reliance.

[30]*Select Charters*, p. 245. Other accounts of the granting of the commune occur in *"Benedict of Peterborough,"* ii, 214 (Rolls Series) Giraldus Cambrensis, *De Vita Galfridi Archiepiscopi Eboracensis*, iv, 404.

[31]*Gesta Stephani*, iii, 5–6 (Rolls Series).

the most formative period for anti-royal methods, the anti-royalists remained in London for several months.[32] Since they were confederated against the king then they could hardly have avoided an exchange of ideas upon methods of opposing the king.

More than is often realized London was possessed of some feudal features and paralleled the organization of the realm. The sokes in the city were held by churchmen, nobles, and citizens. The Archbishop of Canterbury, the Bishops of Ely and Worcester, Earl David, brother of the King of Scotland, the Earl of Gloucester, Hugh de Neville, Warin Fitz-Gerald, and the great anti-royalists, Fitzwalter and Richard de Muntfichet were numbered among the sokeholders.[33] This should not be overemphasized. While the holders of sokes must necessarily have had an interest in the city, as such they took little part apparently in the political life of the city. Like the kingdom the city of London had once had its own justiciar and a city leader was accused of saying that London would have no king save its mayor.[34]

London's triumphs were largely due to the barons of London. Thus in 1191 the commune was received *a maioribus baronibus civitatis,*[35] and King John's charter of 1215 was granted to *baronibus nostris de civitate nostra Londoniarum.*[36] The barons of London are not to be looked upon as merely middle class burghers to whom no noble might look with anything but contempt, as would have been the case in France. No French city had the overwhelming position that London held in England. On the other hand, no English earls had a position equal to that of such French nobles as the Dukes of Normandy and Aquitaine. The greater barons of London were men of great wealth and of such social position that their heiresses married into families like the Nevilles and the Bardolphs.[37] It may be presumed that if the barons of the realm accepted wives from among the baronial families of London that they might accept ideas also.

While McKecknie has spoken of the committee of twenty-five of 1215 as "an oligarchy of disaffected crown tenants whose baronia-homogeneity was broken only by the presence of the

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[32] *Annales de Waverleia,* p. 283 (Rolls Series).
[33] See Page, *London,* etc. p. 131 ff.
[34] *Select Charters,* p. 305.
[35] Round, *The Commune of London,* p. 253.
[36] *Select Charters,* p. 311.
[37] Page, *London,* etc. p. 266.

mayor of London," it should be remembered that of the other twenty-four Richard de Muntfichet was lord of Muntfichet Castle in London and that he had as a London neighbor, Robert Fitzwalter.[38] Unlike most sokeholders these two apparently had their principal holdings and probably their principal interests in London. Fitzwalter was banneret of London, that is, leader of the civic military forces. He may have engaged in trade and appears as a witness of the London charter granted by King John in 1199.[39] One chronicle states that when the citizens of London rendered homage in 1215 Robert Fitzwalter came first and after him Mayor Hardel.[40] The connection of Muntfichet is not so important. He remained a leader until the Barons' Wars several decades later and served as a representative of the barons on the anti-royal committee in 1244.

While the parallelism of London and the anti-royal group in political and social organization may seem obvious to us, the really important part is whether it was recognized by the thirteenth century groups.[41] If it was, the chances for imitation were much greater. On the side of London there is in the alleged city program a desire for concurrent action of realm and city in regard to royal aids.[42] There is a possibility that the same parallel suggestion appears in chapter twelve of Magna Carta.[43] London's military leader, Robert Fitzwalter, became the military laeder of the barons in 1215. In this year, moreover, the London and Waverley chroniclers speak of the confederacy of the barons with the Londoners.[44] The most impressive evidence is the use

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[38]R. R. Sharpe, *London and the Kingdom* (London, 1894–1895), i, 80.

[39]Pollock and Maitland, *op. cit.*, i, 646: D.N.B. under Robert Fitzwalter. For the charter witnesses see Page, *London*, etc. p. 119 who suggests that this charter may have been granted through the influence of Fitzwalter, a highly doubtful inference. As lord of Baynard Castle he had certain rights upon the Thames which may explain why the part of London's program which pertained to the river was not made a part of Magna Carta. For Fitzwalter's rights see *Eng. Hist. Rev.* vxii, 485. For London's program see *ibid.*, p. 726.

[40]*Surrey Archeological Collections*, xxxvi, 50.

[41]McKecknie doubts this "for their cases are far from parallel," *Magna Carta*, pp. 237–238.

[42]See note 29 above.

[43]*Ibid.*

[44]*De Antiquis Legibus Liber*, p. 201. "Qui Barones cum Londoniensibus confederati sunt et jurati se nullam pacem facturos cum rege sine assensu utriusque partis. *Annales de Waverleia* (Rolls Series), p. 283. Moram autem faciebant barones in civitate Londonie per annum et amplius cum

of the London seal by the anti-royal forces in 1247 upon their letters to Pope and Cardinals:[45]

> And because our community has no seal we send these presents to your holiness, signed with the mark of the community of London.

The use of the seal of another would seem to imply an acknowledgment of propriety as, for instance when a younger brother uses his older brother's seal because he has none of his own.[46] About this time Bishop Grosseteste addressed a speech to the barons of England, the citizens of London, and the community of the realm.[47]

The influence of London upon the barons of England is manifest in several provisions of Magna Carta.[48] Article twelve has been discussed: if its wording is ambiguous, its purpose to afford London some protection seems obvious. Obstacles to navigation of the Thames and the Medway are to be removed (Article 33), and the London measure for grain is designated as among the standard weights and measures for the whole kingdom, a provision of importance for London merchants (Article 35).[49] The most sweeping grant is in Article 13:

> And the city of London shall have all its liberties and free customs as well by land as by water.

Inasmuch as London possessed many charters containing a great variety of liberties such a provision was of as much value to the city as the many feudal provisions were to barons who had the concession of their liberties in Magna Carta and in unwritten custom.[50] It is reasonable to suppose that Mayor Hardell, Mont-

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civibus confoederati, promittentes se nullum pacem facturos cum rege sine assensu utriusque partis.

[45]Matthew Paris, *Chronica Majora*, iii, 17 (Rolls Series): translated by Giles, ii, 205.

[46]*Guisbro' Chartulary*, ed. W. Brown (Durham, 1889, Surtees Society No. 86), i, 63. Et quia sigillam non habui, hanc cartam meam sigillo Eustachii fratris senioris et terre domini signavi. Cf. the Latin of the previous quotation, "Et quia communitas nostra sigillum non habet presentes literas signo communitas civitatis Londoniarum vestre sanctitati mittimus consignatas."

[47]London, British Museum, *MS Reg. 7 E ii*, fol. 393v–394r.

[48]That is, it is to be assumed that the presence in any document of clauses peculiarly favorable to one party implies influence by that party.

[49]Article 41 is regarded as evidence of baronial hostility to London; see McKecknie, *Magna Carta*, p. 404: Petit Dutaillis, *Studies Supplementary*, etc. III, 102 even doubts whether article twelve was for London's advantage.

fichet, and Fitzwalter were responsible for the inclusion of the clauses favoring London, but in any case the London influence is clear. To this London may be more easily attributed the expedients in Charter 61 which resemble London methods than to any other group which helped shape Magna Carta. Likewise in the Provisions of Oxford a specific article prescribes the amendment of the Exchange of London.[51]

We have, it is true, no explicit statement that London and its barons influenced the methods of anti-royalist bishops and barons. It is the only link lacking in the chain of evidence, a link which may be missing more or less accidentally. Yet we have just such evidence for London influence upon other sections of the English people. Many boroughs were proud to acknowledge in their charters that they imitated London.[52] According to Jacob's paraphrase of the chronicler, Fitzthedmar:[53]

> The example of the innumerable number of ribalds who publically called themselves bachelors spread to other towns throughout England, where similar leagues formed, to repress the greater burgesses, and it was the refusal of London to accept the Mise of Amiens, to quote the London chronicler once more, that infected practically the whole body of middle folk in England—*fere omnis cummuna mediocris populi regni Anglie*—a very striking phrase.

It is undeniable that London's methods were widely imitated. If English boroughs constantly borrowed ideas from London and if upon two occasions the *ribaldi* of London influenced the same class or similar class in England, it can hardly be doubted that the barons of London may have influenced the barons of England in a similar fashion even though it is not recorded in the chronicles.

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[50]McKecknie, *Magna Carta*, p. 117, says of London's place in Magna Carta,

"A mere confirmation of existing customs, already bought and paid for at a great price, seems a poor return for support given to the movement of insurrection at a critical moment, when their adherence was sufficient to turn the scale. The marvel is that so little was done for them."

Yet all the barons themselves received for themselves was a confirmation of privileges which they were supposed to have enjoyed for a long time.

[51]*Select Charters*, pp. 383 and 387.

[52]Gross, *Gild Merchant*, I, 254. Also notice the thirty-second of the Articles of the Barons, "de civitate Londonie, et de aliis civitatibus que inde habet libertatibus." *Select Charters*, p. 288.

[53]E. E. Jacob, *Studies in the Period of Baronial Reform and Rebellion (1258–1267)* (Oxford, 1925), p. 134.

With our modern ideas of nation and empire in mind the thought of a city furnishing political methods to a wider group seems a bit incongruous. Yet the advanced politics of the classical and mediaeval world tended to center in the cities. Athens, Sparta, Carthage, and Rome in the classical world are paralleled by Venice, Florence, Genoa, and the Hanse towns in the mediaeval world. It was the striking similarity of some of the anti-royal methods to those of some of the Italian communes which first led the author to seek precedents for anti-royal action in communal circles. This search, once started, led apparently to London.

Tentative as some of the evidence is, it is none the less suggestive. The fundamental importance of the question of the source of the anti-royal idea of permanently organized resistance to the king and of a continued insistence of a program of their own on the part of the anti-royalists justifies even a tentative hypothesis. Should this hypothesis be strengthened by further study it will be the basis for an even better understanding of the peculiar strength of the English constitutional system. Parliament would have its roots not only in the many sources already noticed, but it would also have through London very virile roots in the aggressive and self-conscious movement of the mediaeval communes.

THE NATURE OF DEMOCRACY[1]

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Democracy does not easily lend itself to useful definition. It furnishes an excellent example of the lack of preciseness which is an attribute of so many of the terms employed by the student of the science of government. Some students would eliminate such words and employ altogether new terms, in the belief that the new terms, once accurately and exactly defined, can be kept free of the sorts of associations which render the old words difficult and, as some think, useless. However, it is very doubtful whether a great deal of help may be expected from this effort or from other aspects of the endeavor to render the science of government an exact science through the identification of its methods with those of the physical sciences.[2] The subject matter in the two cases is different not in degree but in kind; and, as Professor John Dewey says,[3] the difference between things which are what they are regardless of human effort and desire (and, he might have added with Lord Bryce,[4] regardless of time and place) and things which are what they are at least to some extent because of human effort and desire (and which, he might have added, change with time and place) cannot be got rid of by any methodology. In respect of this latter variety of things, experience would seem to show that it is inevitable that many of the terms employed for these things and in connection with these things will become encrusted with a variety of associations; and the simple denotation of the terms will sometimes disappear, sometimes become modified, and always become of minor importance as compared with their rich connotation. In this respect, it is unlikely that a new term can long remain superior. To take a simple example, it is doubtful whether a term like *fascism* is on

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[1] A paper read at the Institute of Public Affairs of the University of Virginia to the Round Table on *Democracy as Operative in America* on the occasion of its first meeting on August 5, 1929, under the leadership of Professor Thomas H. Reed of the University of Michigan.

[2] Cf. the writer's "Government as an Exact Science," *The Southwestern Political and Social Science Quarterly*, Vol. IX, No. 3, Dec., 1928, pp. 252–263.

[3] *The Public and Its Problems* (New York, 1927), p. 7.

[4] *Modern Democracies* (New York, 1924), Vol. I, ch. II.

account of its newness more precise or useful than the term *democracy*, though the former has by no means been in current usage so many years as the latter has centuries. Though democracy may doubtless to some extent be subjected to quantitative study and other processes which may be roughly called scientific, at the same time, what appears important is not to confine it by defining it, but to give it more meaning; or, since this appears itself to be a quantitative expression and since the advocates of the scientific method may contend that democracy already has too much meaning, the desirable thing to do would seem to be to make the term more *meaningful*. It is important, of course, to gather as many "facts" as possible about it, so long as gathering information does not degenerate into an end in itself; but what is of transcendent importance is an untiring effort more and more to understand it a little better.

In this effort at understanding, the method, if it is necessary to speak of method, should be re-examination and "a frequent recurrence to fundamental principles."[5] No other procedure holds out much hope in connection with a thing so complex as democracy, for the concept of democracy includes what is and what ought to be, what has been and what may be. It includes a highly varied practice and an at least equally varied theory. It not only marks a stage in a development but is itself a process of development containing things accomplished and things striven for as well as things struggled for in vain and things yet hoped for. It manifests itself in a large number of fairly different legal arrangements or governmental systems, each of which itself influences and is in turn influenced by fairly different social, economic, and moral systems. The task is, therefore, not easy, and no good can result from underestimating its difficulty.

It may be stated at once that in a re-examination of democracy no help is to be expected from a large number of people who are interested in democracy, — in fact, such persons are distinct hindrances. These are the people whom Professor Willey calls[6] "uncritical advocates" and whom Professor Sait denominates[7] the "fundamentalists" of democracy. It is not easy to cite many

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[5] *Const. of Va.*, Art. I, Sec. 15.

[6] "Some Recent Critics and Exponents of the Theory of Democracy" in Dunning (Merriam, Barnes, and Others), *Political Theories: Recent Times* (New York, 1924).

[7] *Democracy* (New York, 1929), Ch. I.

well-known names falling within this category; but so far as number is concerned, their name is legion. They have a sort of mystic regard for democracy and elevate it into a kind of religion. It is easy to dismiss their views, or lack of them, as deserving only of contempt; but the force of their numbers and of their faith must be reckoned with.

The critics of democracy fall into two classes: on the one hand, there are adverse and inimical critics whom Professor Sait calls[8] the "higher critics"; and, on the other, there are those who attempt to take a middle ground and who may be called, with Professor Wiley,[9] the "critical advocates of democracy." The inimical critics furnish an occasion and a reason for a re-examination of democracy. In the ranks of the critical advocates must be found those who are to undertake any re-examination which will lead to anything but destruction.

A starting point in an investigation of the nature of democracy may be found in the etymological meaning of the word. In its origin, commonly ascribed to Herodotus, democracy meant *government by the people.* In this meaning the element *people* is on the whole less important than the element *government.* The Greeks, more especially Aristotle, often spoke of government by the people or by the many; and though questions of considerable importance connected with the proper distinction between the few and the many may be raised, in general, no great difficulty is encountered in this connection. If some allowance be made for differences of time and circumstances, the concept *people* is as definite and simple at the present time as it was with the Greeks. The same is by no means true of the concept *government,* and in this is to be found the key to many of the questions and difficulties involved in the study of democracy.

To the Greeks, the process of government was very nearly identical with what we should call today the process of administration. To suggest a law in the modern sense of the word was in Ancient Athens a crime. The problem of government was primarily that of getting routine affairs done. To employ a biological expression, the governmental organism tended to be undifferentiated. The same thing is roughly true in general history. The further we go back, the more nearly does government tend to be identical with administration; and governmental

[8] *Ibid.*, Ch. II.
[9] *Loc. cit.*

organization is less differentiated. For example, the interest of William the Conqueror and his immediate successors was literally almost wholly that of administration. Judicial functions subsequently developed and judicial organization grew. The function of legislation as now understood was comparatively late in developing, as was the paramount importance of the legislative organ. To employ once more biological analogy, growth in variety of function was attended by differentiation of organs and by complexity in the organism. The process has gone on until a modern government is an extremely complicated and complex affair, and the process of government is highly different from government with the Greeks. However, it is interesting and important to note that just as government and administration tend to be identical the further one goes back in history, so government and administration tend to become identical the further one goes from the center. It is in connection with these considerations that one or two conclusions of possible value to the study of democracy may be suggested.

In the first place, when government was simple, the concept of democracy was simple. When the concept of democracy was simple, democracy formed an element in a useful classification of governments. Aristotle, after studying a large number of constitutions of simple governments, could naturally and usefully conclude that governments, all of which had as their primary and almost sole task getting administrative business done, were different one from another, depending on whether one man, a few men, or many men handled the business of administration. At the present day, however, the classification of governments into monarchies, aristocracies, polities, and their perverted forms is almost altogether useless. Government is infinitely more than administration. To suggest that a modern government is government by one man, by a few men, or by many men is to say almost nothing about it. In fact, a complex government of today is all of these at the same time.

It must then be clear, to begin with, that the "father of political science," in his low estimate of democracy, in reality furnishes no valid historical argument for the inimical critics of modern democracy. It is a commonplace with the modern student of government that administration is not the act of many; but to argue from the incompetence of the many in this respect to the

inevitable incompetence of democracy in a modern state ought not to mislead.

Again, it should be clear that in complex conditions, the presence of elements which cannot be literally regarded as simple government by the many need not be feared as compromising the essentially democratic nature of a modern government. The existence of a King and, still less, a consistent application of the principle of executive unity need not make a government less truly democratic. The presence of this principle or practice in a modern state may be highly desirable. In any event, its presence does not prove that dictatorship is the only hope in democratic countries. Likewise, the existence of an hereditary peerage and, still less, of a learned and independent judiciary is in no way necessarily incompatible with democracy. Even the much discussed organized minorities of today are not of necessity evils as such. Least of all need any of this mean, as has been held, that democracy inevitably degenerates into oligarchy. A great deal of confusion would almost certainly be avoided if it should be clearly recognized that simple concepts of government and simple classifications of mutually exclusive types of government belong, if anywhere, to ancient history.

The fact would seem to be that here, as in all complex matters, the question is one of relationship. The problem is that of maintaining elements which are not in the original sense of the word democratic in a proper position of dependence on the truly democratic. This is recognized even by the inimical critics of democracy, though they attempt to turn it into an adverse argument. They contend that the concept "consent of the governed" has no necessary connection with democracy, since monarchy and oligarchy are, according to them, likewise based on consent. In reality, no modern government may be properly called a monarchy or an oligarchy unless in the relationship of its complex elements the monarchical or the oligarchical holds the others in a position of dependence. But if the democratic element is really in a position of dependence, no genuine consent can be said to exist; and, on the other hand, if such elements are freely consented to, the form of government is true democracy.

So much for some of the matters growing out of the difference between ancient and modern concepts of the process of government. No less important considerations attach to the corollary that even in modern complex governments, government tends to

become administration as the distance from the center becomes greater. The logical conclusion would, therefore, seem to be that there is little place in local government for the democratic principle; and it must be admitted that existing tendencies support such a contention. However, anyone who has been brought up in the Anglo-Saxon tradition instinctively finds such logic too rigid. In the first place, local government and administration are not literally identical; and, in the second place, to stress the administrative rather than the local character of government far away from the center results in centralization with all its evils; that is to say, it removes certain monarchical and oligarchical elements so far away from the democratic elements that the proper relationship between these elements tends to be stultified; in other words, government tends to become undemocratic. In a re-examination of democracy, there is no more pressing problem than that of how to secure expert local administration without too great loss of popular interest and control. Aristotle understood the difficulty of the problem, and it has in recent times been stated with great force by Mr. Walter Lippmann.[10] Its solution is of paramount importance. Mr. H. G. Wells has said[11] that democracy dies five miles from the parish pump; but the contention here is that it need not so die, if in the complex organization and process which are far from the village store, the inevitable non-democratic elements are kept in proper relationship with the democratic; and yet, since the non-democratic reach especially close to the crossroads store, it is important that democracy remain very much alive and kicking in close proximity to this point. If democracy retains its vitality close to the parish pump, it has excellent chances of remaining alive more than five miles out.

The argument up to the present point may be briefly summarized. In modern complex conditions, it is impossible for the process of government or the organization of government to mean literally and wholly, or even in large measure, government by the many. Furthermore, the presence in a modern government of non-democratic elements by no means renders this government undemocratic. The question is one of relationship. Again, non-democratic elements, in the nature of things, tend to appear far from the center of government and at points where the maintenance of the proper relationship between democratic and non-

[10]Cf. *The Phantom Public* (New York, 1925), Ch. VI.
[11]Quoted by Sait, *op. cit.*, p. 54.

democratic elements is most difficult. If these things are borne in mind when the question of the organization of democracy is studied, the true nature of democracy is less likely to be obscured.

For the student of political science, the organization of government and the manner in which government operates are his primary concern. Nevertheless, when the question arises, as it must, why a certain organization operates as it does operate, he comes into contact with things which, though of the greatest interest and importance to him, also fall within the spheres of other students besides himself. Thus, the primary interest of a political scientist, when he comes to a study of the nature of democracy, is that government should be organized and should operate according to the principles which have been suggested. However, whether or not this happens depends in large measure on other things, which he cannot neglect, such as public intelligence, public opinion, education, the press, and the like. This sort of thing does not belong after nor before organization and operation. They all belong together, each reciprocally affecting the other. Therefore, the attempt should be made, in spite of the complexity of the subject, to think it whole. Division of labor and attempts at analysis should be attended by frequent efforts at synthesis. In this direction alone lies the hope of fruitful re-examination. Unlike the false rationalist, who is fond of saying that he would rather die than give up those of his beliefs which are his basic assumptions, the true student of democracy should prefer to die rather than give up the attempt better to justify his beliefs through a better understanding of them.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

The University of Texas

Braden, Charles S., *Religious Aspects of the Conquest of Mexico.* Foreword by Isaac Joslin Cox. (Durham: Duke University Press, 1930, pp. xv, 344.)

In a prospectus advertising it, this book has been described as "a pioneer study . . . both authentic and impartial . . . of a great religious and social movement" in Mexico. The book is a very useful pioneer study in the English language of the subject discussed, but from the standpoint of interpretation and the choice of sources it cannot qualify as being altogether authentic and impartial; hence it falls short of approximating a definitive study on the subject.

The subject matter is divided by the author into nine chapters. Of these the first three, comprising one-fourth of the body of the book, contain a brief historical introduction; a summary account, based chiefly on obvious secondary authorities, of religion in Spain at the time of the Spanish conquest of America; and a fifty-five page chapter dealing with the religion of the Mexican Indians at the time of the conquest. The last-mentioned chapter is a scholarly and very useful summary of a subject concerning which Mexican investigators and historians have written and continue to write in detail that is out of all proportion to its correct setting in the history of Mexico. Chapters IV–VIII, inclusive, treat of conditions during the first fifty years of the conquest, and the final chapter discusses the permanent influences of the native religions of Mexico upon Roman Catholic Christianity.

In Chapter IV the author, cognizant of the fact that Cortés is forever "assured . . . a place among the great dramatic military figures of history," essays to reveal "Cortés the Apostle of the Christian faith, the man who planted Christianity on the American continent." On the basis of Cortés's "reported speeches and writings," the author concludes (p. 77) that Cortés "frequently appears to think of the whole enterprise of conquest as a holy crusade and of himself as God's appointed agent to free the natives of Mexico from the power of the devil." The judgment of the author is open to grave question; indeed, in the reviewer's opinion, Cortés was far more interested in the political conquest than he was in the spiritual conquest. It must be remembered that all of the early *conquistadores*, even the ruthless Pedrarias in Panamá and the inhuman Nuño de Guzmán in Nueva Galicia, were self-professed God-fearing, pious men, zealous for the welfare of God and King. Under ordinary circumstances, therefore, Cortés would probably have been no different from the average *conquistador* who came to America, with the background of 700 years of crusading against the Moors, and with the cross in one hand and the sword in the other. But of all the early conquerors, none had greater need than Cortés of convincing Charles V of Spain, Holy Roman Emperor and the militant champion of Catholicism in Europe, of his piety, good works, and zeal for the spread of Christianity in the new world. Prior to 1522 Cortés was a rebel and the

need was correspondingly great for appeasing his dread sovereign; after 1522 Cortés was under grateful obligation to Charles V for having raised him from the status of a rebel to that of *de jure* governor and captain-general of New Spain. Under these circumstances it is not surprising that Cortés acquainted the Emperor with the motives behind his benefactions to the Church (p. 80) or that he waxed enthusiastic in describing his efforts to destroy the idols of the Aztecs (pp. 116–118).

Questionable as the reviewer holds the author's judgment that Cortés's piety was overly genuine or more than was to be expected under the circumstances, even more questionable does he hold the author's choice of sources upon which this judgment is based. An examination of the footnote citations in Chapter IV shows that it is based largely upon Bernal Díaz del Castillo's well-known *Verdadera Historia de la Conquista de la Nueva-España* the title of which is incorrectly given in the Biblography (p. 329). Of the 65 footnotes in the chapter, seven consist of citations to statements of Cortés, thirty-eight cite quotations from Bernal Díaz, and seventeen make citations to nine other writers.

That such overwhelming reliance upon Bernal Díaz is not satisfactory is evident when it is recalled that he wrote his *Verdadera Historia* in his old age, many years after the events which he narrated had taken place, and that critics, while recognizing the great value of his history, are agreed that he was prone to exaggerate, that he was highly imaginative, that he liked to tell a good story—in brief, that he was one of the jolliest gossipers of his age. As far as Cortés himself is concerned, the author could not place confidence in either his actions or his words. On page 85 the author expressed his inability to harmonize Cortés's notorious sexual immorality with his Christian pronouncements and condoned it "as the best indication of the standard of the times"; on page 120 the author admitted that Cortés wrote "with at least one eye to impressing the King with his importance."

It is not the reviewer's intention to pursue in detail the matter of the author's choice of sources. Suffice it to say that Chapter V, "The Early Missionaries," is based chiefly on the writings of Mendieta, a writer of standing of the 16th century, and those of Cuevas, a Jesuit historian of the 20th century. In the footnotes of this chapter twenty-three citations are to the writings of Mendieta; twenty-one are to those of Cuevas; and seventeen are to miscellaneous writers. A notable source which might have been, but which was not, utilized for this chapter, is Garcia Icazbalceta's *Don Fray Juan de Zumárraga*—Mexico's first bishop. In his discussion of the use of force and authority exercised by the religious upon the natives (pp. 168–173) excellent use might have been made of the documents in Vol. XV of *Documentos Inéditos o Muy Raros para la Historia de Mexico*, edited by Genaro García. In that volume there are many documents which reveal the outrageous and inhuman conduct of the religious toward the indigences, some of whom were burned by Bishop Zumárraga, despite rigid orders from the crown for him to desist. These documents reveal how brutal in the extreme was the action of Father Landa in Yucatán as late as 1567; he tormented the natives by ingenuous methods, with the result that some died and others were maimed. Had the author made use of these basic sources there would have been no occasion for the conclusion that the part played by the "pressure of authority . . . has been overstressed" (p. 171).

The author on occasions naïvely reveals a lack of profound knowledge concerning the sources relating to his subject. On pages 126–127 he translates a document concerning which he states: "The document was found by the present writer only in a seventeenth century work, *Teatro Eclesiástico* by González Dávila. It seems strange that it has not been reproduced in some of the many collections of documents that have appeared both in Spain and in Mexico." The document in question was a stock proclamation, prepared by learned men in Spain, that was read by *conquistadores* throughout America to natives with whom they came in contact, usually for the first time, and only the introductory paragraph of it was varied to fit the occasion. It was read by Alonso de Ojeda to the natives of Cartagena in 1509. Pedrarias Dávila had a copy of the proclamation in Panamá, and Narváez read it to the Indians of Florida in 1528. A Spanish copy of the proclamation is found in Herrera, *Historia General*, vol. I, dec. 1. lib. vii, cap. xiv; a French translation of the document is in Ternaux-Compans, *Recueil de Pièces sur la Floride;* and English translations of the same are in Helps, *Spanish Conquests in America*, vol. I, and in Lowery, *Spanish Settlements within the Present Limits of the United States, 1513–1561*, pp. 178–179.

On page 171 the author says: "Apparently a royal order was given forbidding the practice of punishing the Indians, though such an order has not come under our observation." The order is to be found in Vol. XV of the above-cited *Documentos Inéditos o Muy Raros*, etc. On page 332 the author incorrectly cites the last-mentioned collection of documents (which he gave abundant evidence of not having used) as *Nuevos Documentos o Muy Raros*, etc. The accentuation of Spanish words is very carelessly done, as, for example, the accent being omitted from such words as Apostólica (p. 261), Concepción (p. 261), López (p. 330), Suárez (p. 332), and Fernández (p. 329). Other instances of carelessness in both citations to titles and in accentuation might be given.

Enough has been said to establish the correctness of the reviewer's thesis stated in the opening paragraph. In brief, the book is useful and suggestive; it is far from being a definitive study of the subject treated.

CHARLES W. HACKETT.

University of Texas.

Foulke, William Dudley, *Lucius B. Swift:* a Biography. (Indianapolis, Published for the Indiana Historical Society by the Bobbs-Merrill Company, 1930, pp. 153.)

Mr. Foulke, an almost life-long friend of Mr. Swift and a fellow worker with him in the National Civil Service Reform League and in the Indiana Civil Service Reform Association, is peculiarly fitted as a biographer in this case, though naturally prejudiced in favor of his subject. Mr. Swift's most vigorous efforts for fifty years were in behalf of civil service reform. He was the earliest of the active reformers of Indiana, entering the fight in 1880 in support of Garfield, and making speeches in favor of civil service reform. In 1884 he supported Cleveland, and the Democratic candidate carried Indiana by about 3000 majority. Shortly afterwards, the Indiana Civil Service Reform Association was organized, and Mr. Swift personally investigated the enforcement of the civil service law in the Indianapolis post office and in the state at large. His report of abuses stimulated an

investigation by the National League and by the United States Civil Service Commission. In a personal interview he asked President Cleveland to stop the violations of the law. In 1888 he testified before a Senate committee investigating the federal civil service. Disappointed with the record of Cleveland, Mr. Swift and many other Indiana reformers supported Harrison in the campaign of 1888. With the efficient aid of his wife he launched in March, 1889, the publication of the *Civil Service Chronicle*, a magazine devoted entirely to editorials and news regarding the spoils system and reform. For nearly eight years, at a great personal sacrifice, the Swifts faithfully recorded the progress of the merit system.

Although critical of Harrison's mistakes in regard to reform, Mr. Swift accorded the President credit for the appointment of an excellent civil service commission, including Theodore Roosevelt. Weighing the balance between Harrison and Cleveland in 1892, he decided to support the latter, the sole determining issue being that of civil service reform. Dissatisfied with the first months of Cleveland's second administration, the *Chronicle* turned to praise, when the President, before the end of his administration, made wide extensions of the classified service. McKinley's concessions to the spoilsmen brought protest from Mr. Swift, who had supported him against Bryan in 1896.

Roosevelt's two administrations were the "golden era of civil service reform." Mr. Foulke, likewise a close personal friend of Roosevelt, thus describes the relations of the two men: "Swift's personal acquaintance with Roosevelt had begun during the Baltimore conference of civil service reformers on February 23, 1889, shortly before Harrison's inauguration. A close and flawless friendship between them was there formed which lasted through life." In 1908 Mr. Swift was appointed a member of a committee of the National League to investigate charges of coercion of federal officials by the President in support of Mr. Taft. The committee reported after the election that evidence was lacking to sustain the charges. Taft's abandonment of Roosevelt's policies led Mr. Swift to join the Progressive movement in 1912 in support of Roosevelt.

Only once in his long career did Mr. Swift hold office: in 1919 he was appointed a member of the Board of Sanitary Commissioners of Indianapolis and served for four years and nine months. During his tenure he demonstrated that a city department could be operated free from personal and party politics. The last two years of his term he successfully resisted the efforts of a spoils mayor to oust him from office.

His interest in reform never lagged. Only a few months before his death he was in correspondence with the Secretary of the National Civil Service Reform League regarding the progress of what he considered the most vital reform.

The author has wisely refrained from writing too much, and has allowed Mr. Swift, in so far as possible, to tell his own story by means of excerpts from letters, diaries, and speeches. His public activities are stressed and most particularly his work in behalf of civil service reform, but enough of his private life and personal characteristics are given to show him as a well-rounded individual, thoroughly alert and interested, and strictly honest regardless of his own welfare.

FRANK M. STEWART.

The University of Texas.

Haig, Robert Murray, *The Public Finances of Post-War France.* (New York: Columbia University Press, 1929, pp. xxviii, 463.)

Ogburn, William F., and Jaffé, William, *The Economic Development of Post-War France.* (New York: Columbia University Press, 1929, pp. xii, 613.)

These books represent volumes one and three of a series, *Social and Economic Studies of Post-War France,* sponsored by the Columbia University Council for Research in the Social Sciences and published under the editorship of Professor Carlton J. H. Hayes. Professor Haig's study falls into three major divisions: Part I, The Development of French Financial Policy Since the War; Part II, The Public Debt of France; and Part III, Taxation and Expenditure. Part I begins with an account of the pre-war struggle in France for tax reform. Professor Haig's brief analysis bears out the general impression that the outbreak of the War found France financially unprepared. "Her revenue system, with its highly elaborated indirect taxes and its entirely antiquated direct taxes, was inadequate to meet even the relatively insignificant pre-war demands." There follows an account of developments in French finance during the War period, designed to meet the terrific financial burden which the War carried. The analysis gives emphasis to the fact that France, as perhaps no other warring country, depended upon loans, foreign and domestic, for funds with which to prosecute the War. Although additional revenue was secured from taxation, in part from the income tax and the war profits tax, total revenue from taxation in 1918 represented a decrease of almost fifty per cent in purchasing power as compared with that of 1913 with its more valuable franc. The Peace, with its promise of heavy reparations, was followed by a period of apathy and indecision during which politicians were loathe to recognize the fact that the financial burden occasioned by the War and reconstruction could never be shifted entirely to the shoulders of the vanquished. Tax reform in 1920, with its increase in the number of indirect taxes, chief among which was the turnover tax, gave only temporary relief. Confronted with the necessity of heroic measures such as a capital levy, consolidation of the domestic debt, or a cancellation in values through inflation, France chose the last. Not until the latter part of 1926 was the budget stabilized and the franc "saved" by permanent stabilization at approximately one-fifth its pre-war worth.

Part II of the study contains a detailed analysis of the present public debt of France, and Part III a description of the present national and local tax systems, a discussion of the burden of taxation and an account of current governmental expenditures.

The study is admirably done. Professor Haig recognized clearly the perilous task involved in an analysis of such a complicated mass as French financial and statistical data present. Despite the difficulties with which he was confronted, he has handled his task in a skillful, objective and scholarly manner and has drawn his conclusions with appropriate caution. The study is of particular value, of course, to those whose primary interests lie in the field of public finance, but its appeal and its usefulness are broader than this. Not the least of its merits is the emphasis on a point now clearly recognized by informed students in the field of economics and international relations, but ignored or not appreciated by laymen and politicians; *viz.*,

that reparations and interallied indebtedness are indissolubly associated. "However adverse America may be to the linking of the reparations problem with that of the war-debt problem, the plain fact is that France's ability to pay England and America will be vitally affected by her success in securing reparations from Germany. France has made her financial sacrifice by writing off four-fifths of the value of the franc. She sincerely believes she is now taxing herself to the limit. He would be an ingenious person indeed who could devise methods of taxing her much more heavily. . . . Convinced that the tax system cannot be made to produce more, the only solution France sees [should reparations fail] is inflation. Thus it may be for America to decide whether the financial history of post-war France has ended or is only beginning." In the light of the predicament in which Germany now finds herself, it is not unlikely that this is a decision which America must make within the calculable future.

The volume by Professors Ogburn and Jaffé includes a detailed account of the economic readjustments which have occurred in France since the War, readjustments occasioned in considerable part by the War and the Peace with its territorial acquisitions. Specific attention is given to the following topics: currency disturbance, capital, post-war production, effects of inflation on trade, effects of inflation on production, and the industrialization of post-war France. In addition a detailed account is given of developments in the coal, oil, electrical, iron and steel, engineering, textile, and chemical industries, in foreign trade, and in agriculture. The study indicates that the French recovery from the War was sharp and that France shared rather liberally in the industrial and business expansion which characterized the western world in the period 1922-29. The account closes with 1928; subsequent developments indicate, of course, that French prosperity is intimately bound up with that of the economic system of which France forms but a unit. Although she has withstood relatively well the ravages of the present depression, apparently matters have recently taken a turn for the worse. The study, accordingly, scarcely warrants a modification in the conclusions which Professor Haig reached with regard to reparations.

The Columbia University Council for Research in the Social Sciences is to be congratulated for having undertaken the series of studies of which these two volumes form a part; the authors of these particular volumes, for having performed their tasks in such a creditable manner.

GEORGE WARD STOCKING.

The University of Texas.

Wright, Quincy. *Mandates Under the League of Nations.* (Chicago: University of Chicago Press, 1930, pp. xvi, 726.)

Of the many books and pamphlets which the mandates system has inspired, the only serious rival for the first place in point of comprehensiveness and authority to this large volume by Professor Wright is the two volume work by M. Van Rees of the Permanent Mandates Commission on *Les Mandats Internationaux.*

Professor Wright divides his book into 5 parts, 16 chapters, 63 numbered divisions under chapters, and 82 lettered subdivisions under the numbered chapter divisions. Part I concerns the origin and development of the mandates system, and occupies 100 pages. Its three chapters deal with the origin

of the mandate idea, the establishment of the institution of mandates, and the reception of the system. The first chapter gives a fairly good summary of the origin of the mandate idea, but the present reviewer feels that Professor Wright should have given us more of the benefits of his matured scholarship by a more pointed evaluation of the relative importance of the various backgrounds of the mandate idea. The establishment of the system is well set forth in Chapter II; and the third chapter, on the reception of the system by various groups of opinion, is a real contribution.

Part II is devoted to the organization of the mandates system, and covers somewhat over 160 pages. Here the whole system is treated analytically according to function. A chapter is given over to each of the following topics: (1) the confirmation of the mandates; (2) the agencies of League supervision; (3) the discovery of facts; (4) the supervision of mandatory administration; and (5) the establishment of standards. These chapters are well-done, and each point is illustrated with a wealth of material. From the present reviewer's point of view, this is the heart of the whole subject, since the institutions and the functions actually performed are regarded as more important than the international law involved in the system.

But Professor Wright feels differently, and devotes 275 pages in Part III to an examination of the international law of the system. There are chapters on (1) the system of international law; (2) the theories of jurists (as to the mandates system); (3) general principles of law; (4) the practice of states; (5) the practice of international institutions; and (6) the interpretation of the documents. The present reviewer believes that the entire chapter on the system of international law (over 45 pages) has no place whatever in this treatise. All of its pertinent points are thoroughly covered in the next chapter, which is indeed an admirable piece of work. The third chapter might well have been excised, except for a few pages on the legal nature of the League of Nations and the private law meaning of mandate, tutelage and trust. The next chapter, on the practice of states, mostly mandatories, certainly has a place and is adequately done. The chapter on the practice of international institutions is one of the most valuable in the book, though many of the points are also mentioned in Part II. It treats in detail of the legal points which have arisen in connection with the rights of the League, the rights of the mandatories, the rights of mandated peoples, and the rights of third states. In each case what has been done to settle these points is given in full. Unqualified praise can be given this chapter, though there may be slight differences of opinion concerning the solution of certain problems. The last chapter deals with a very important matter, the interpretation of the documents, and is very well done.

Part IV attempts to set forth the value of the mandates system, in two chapters covering nearly 50 pages. The first section of the chapter on the achievements of mandatory administration must be classed with some of the sections of Part III as elementary matter from other fields, but the remainder of the chapter is to the point and admirably summarizes the system's achievements from the standpoint of native welfare. The chapter does not embark upon that fascinating evaluation of the mandates system by a comparison of the welfare of the natives of mandated territories with that of natives of colonial territories, but is concerned with what advance

has been made in the mandated territories. A chapter on the further development of the system is a brief speculative statement.

The book has 45 pages of appendices—documents, valuable statistical tables, and outline maps of the territories. A bibliography of documents, books and articles, well-classified, covers almost 30 pages, and a table of cases covers 2 pages. An excellent index occupies the last 50 of the book's 726 pages. The bibliography seems to be carefully done, but unfortunately numerous typographical errors have been allowed to creep into it, particularly in connection with the foreign language titles.

Professor Wright's use of footnotes makes it easy for one to find out where the various opinions on some point, or the various documents to prove or illustrate some statement, may be found, and show that the literature of the subject has been exhaustively and carefully examined. It must be stated, however, that the malpractice to which a good many legal scholars are addicted of including all material bearing even remotely on the problem under discussion, whether or not it contributes anything to its solution, is indulged in to excess. Such overloading of the footnotes with extraneous material makes them cumbersome, kills much of their usefulness as bibliographical apparatus, impairs the unity of the book, and consumes considerable space. While other authorities are frequently referred to by Professor Wright, it is very clear throughout his book that his chief concern has been to wrestle with the documents and to mold their yield into a shape that means something. We thus have a fresh re-examination of the fundamental materials of the whole subject.

A parting word as to the style of the book. The absorbing interest of the author in subduing the multitudinous facts and conflicting theories to order and system has caused him to neglect to make his book interesting reading. It must be admitted that even to the special student the endless piling of fact upon fact beyond the necessities of proving a point sometimes grows wearisome. The over-organization of the material has had the effect of making the book rather choppy in places.

LUTHER H. EVANS.

Princeton University.

Haines, Charles Grove, *The Revival of Natural Law Concepts: A Study of the Establishment and of the Interpretation of Limits of Legislatures, with Special Reference to the Development of Certain Phases of American Constitutional Law.* (Cambridge, Harvard University Press, 1930, pp. xiii, 388.)

Few American political scientists combine so admirably the scholar and the philosopher, as does Professor Haines. In his new book, *The Revival of Natural Law Concepts*, a wealth of information is so arranged and so interpreted that the study as a whole becomes a valuable and trenchant criticism of an important trend in jurisprudence and in political thought today.

The book is divided into five parts. The first is a brief historical survey of the development of natural law doctrines, including those of ancient and mediaeval times, the English doctrines of higher law, and the French and American doctrines of natural law. In the second part of his study, Dr. Haines shows that as early as the revolutionary period, the courts in the United States were using theories of natural law and higher law. Such

theories were used to sanction the review of legislative acts by the courts, which soon took the position that the nature of the social compact and the nature of free republican government placed definite limitations upon the power of the legislature. When the frontier democracy of the Jacksonian epoch emphasized somewhat vociferously the right of the people to rule, the development of higher law doctrines was temporarily checked. Toward the middle of the nineteenth century, however, when the courts desired to protect vested economic rights from legislature action, such doctrines were revived and made to do valiant service.

A very interesting division of the study is the discussion of the part played by natural law concepts in the interpretation of the expression, "due process of law," and in the practical application of the fourteenth amendment to the Constitution of the United States. The courts held greatly divergent views as to the meaning of due process, ranging all the way from the position that the making and enforcement of statutes must be in conformity with natural law, to the simple principle that the private rights of the individual shall not be interfered with except by regularly enacted law, and through formal judicial procedure. Dr. Haines shows that the natural law doctrine of inalienable rights and fundamental principles which must lie forever beyond legal control, served equally well during the revolutionary period as a sanction for revolt against established authority, and later as a basis for the *laissez faire* philosophy in regard to governmental intervention in economic matters. All persons who desired to limit or to prevent legislative action which might interfere with the free enjoyment of vested rights and special privileges, readily adopted the doctrine of a higher law, beyond the reach of the legislature. This philosophy of a higher law, which was formulated and expounded by those early giants, Kent, Cooley and Dillon, was accepted by lawyers and judges to such an extent that it soon permeated our entire constitutional jurisprudence.

Dr. Haines shows how natural rights theories entered into the interpretation of our fourteenth constitutional amendment; and how they have developed, and been developed by, the so-called "rule of reason." A particularly interesting and important chapter deals with the manner in which doctrines of natural law have been used as a method of changing the basis for judicial review of legislative acts from that of pure constitutionality, or a comparison of the text of the law with the text of the constitution, to that of a law above and beyond all texts, a natural law or a group of inalienable natural rights.

Later chapters state briefly the backgrounds for recent revivals of natural law theories, explain the part played by such conceptions in the German doctrine of the legal state, and summarize the views of the principal modern doctrinal writers in France and Germany who have used higher law doctrines as a device for introducing ethical standards as the foundation of law, or for establishing philosophical bases for law. The final chapter shows how the revival of natural law concepts in modern jurisprudence rests upon metaphysical and even theological assumptions.

This study is of particular value in that it does not confine itself to an exposition of the development, the nature, the extent and the divergences of natural law doctrines, but also give definite examples of the far-reaching practical results which have been brought about when such doctrines have

been used, consciously or unconsciously, as working standards in the application of the written law. It is only necessary to read the book, to realize the importance of the service which Dr. Haines has performed, in throwing light into the dark corners where the "weasel words" hide. No person who is interested in legal history, legal philosophy, or the establishment of concrete and definite non-metaphysical legal institutions, can afford to be unacquainted with this magnificent contribution to clear thinking in these fields.

FREDERICK F. BLACHLY.

Brookings Institution.

Schmitt, Bernadotte E., *The Coming of the War, 1914.* (New York: Charles Scribner's Sons, 1930, 2 vols., pp. viii, 539, 515.)

This is a book of the highest importance. It has been pretty generally known that Professor Schmitt has been making an intensive study of the immediate responsibility of the War ever since its outbreak, and the result of his labors has been long and eagerly awaited. The finished product is now before us, and proves to be the most exhaustive study in any language of the fateful thirteen days.

Naturally *The Coming of the War* challenges instant comparison with Renouvin's *The Immediate Origins of the War* and Fay's *The Origins of the World War, Vol. II,* both of which had analyzed the multiplicity of dispatches with the same objective tone. Renouvin's book is perhaps more vivid and dramatic, but Schmitt has wisely preferred to slow the movement of his story in order to marshal the evidence when desirable and thus make his argument the more conclusive. The chief distinction between Fay's judgment and that of Schmitt is that the former, while admitting Germany's blunders, acquits her of the major responsibility for the war, while the latter revives the earlier view that to Germany must be attributed the chief odium. In taking such a position, at a time when "revisionism" has come to attain the dimension of a dogma, Mr. Schmitt has shown a degree of courage that in itself evokes one's admiration. Despite certain technical flaws—almost inevitable in a work of so intricate a character—he has thus far surmounted the storm of criticism to the extent that, in the reviewer's opinion, his main argument has stood its ground.

The point which Schmitt seems to the reviewer to have adequately proved is that throughout the tangled diplomacy of these days Germany gave Austria steadfast assurance that, whatever might be the result of the latter's precipitate breach with Sebria, she could count on the fullest support from Berlin. The general substance of the Austrian ultimatum was known before it was sent; yet there was no disposition to hold Vienna back. More than that, after the Serbian reply had been deemed unsatisfactory (unsatisfactory to Vienna but not to Berlin), it was Germany who pushed Austria into the fatal act of declaring war (this point has never been previously elucidated)—a fact which makes a mockery of all Bethmann-Hollweg's labored attempts to talk mediation to Austria in deference to British pressure. Finally, the author shows that before Russia's mobilization had had time to bring Austria to reason (and apparently there was no effort from Berlin to assist her to reason), Germany made of Russia's move a *casus belli.* The reviewer has never agreed with the critics who regard Russia's mobilization as an act of war—even admitting that many in Russia had come to

regard the war by that time as practically inevitable. Originally intended as a diplomatic club, the Russian mobilization became rapidly transformed into an act of precaution—an act of necessary precaution if we consider the time required for placing Russia's army in complete readiness for action. Since it has been sufficiently proved that partial mobilization was inadequate to meet a possible emergency, the only reasonable course was a general mobilization. But it is manifestly conceivable that both sides might have faced each other fully armed and yet war have been averted by diplomacy. That the Russian mobilization made diplomacy more difficult may be readily admitted; but war was not inevitable until Germany so regarded it and launched her ultimatum to St. Petersburg—followed some twelve hours later by a declaration of war.

It is a little more difficult for the reviewer to endorse the author's approval of Sir Edward Grey. Inasmuch as none of the interested powers wanted war, and each side was seeking a diplomatic victory, one cannot but wonder if Grey could not have tried a bluff that might have convinced the Central Powers—say, before the outbreak of war between Austria and Serbia—that, if they did not consent to refer the case to arbitration, Great Britain would be likely, in event of war, to throw in her lot with the Dual Alliance. The situation required heroic treatment—more heroic than the soft-pedaled Grey seemed to appreciate. No doubt it is easy—all too easy—to look back and speculate on what this undoubted friend to peace might have done, but it is hard to resist the conclusion that Grey, like all the other actors in the drama, was but a second-rate diplomatist, compelled by force of circumstances to play a hand in a life-and-death contest that was utterly beyond his capacity.

But, whatever the specialists in the study of this episode may think of the author's thesis (and the reviewer does not claim to be in that category), his book remains a challenge which is not easily answered. For its exhaustive research, its admirable style, its clear, incisive judgments, and its fearless independence, *The Coming of the War* sets for the future a striking standard for American historiography.

T. W. Riker.

The University of Texas.

Dameron, Kenneth, *Mens' Wear Merchandising.* (New York: The Ronald Press, 1930, pp. xviii, 556.)

In *Mens Wear Merchandising,* Dr. Dameron has used the commodity approach in presenting new data on and about a trade relatively neglected by students of distribution. It contains much new information about the wholesale and retail distribution of men's clothing and related lines.

On page 4, the author states his objects: (1) "To describe the processes of merchandising men's apparel . . . ," (2) "To indicate the importance of consumer demand . . . ," (3) "To suggest the standardization of meaning of merchandising terms . . . ," and (4) "To present in a single study, or to make available in a single study the results of previous research in men's wear distribution." A prior statement reads: "It is, therefore, advisable not only to present the business viewpoint, but to concern ourselves with the problems of the smaller business units."

In attacking these objectives, Dr. Dameron has done well. He has adequately described the marketing agencies including buying groups and trade associations, distribution functions such as salesmanship and advertising, and managerial problems such as budgetary control and operating ratios. Next, he has successfully emphasized the importance of the consumer point of view by giving three chapters to that subject. Third, by consistent use of his terms, he has lent influence to their further standardization. That this is a difficult task is indicated by his own use of the term "Merchandising" which he says, on page 6, can be used interchangeably with "Marketing" and "Distribution." Such connotation may lead to confusion in the minds of some, rather than to further standardization. Above all other objectives, he has succeeded in bringing together much new data on this trade. This fourth objective, which is by far the most significant, is at the same time the greatest handicap to a wide distribution of the volume.

Business books easily divide themselves into two groups, those written for the trained scholar and those prepared for the experienced business man. Too many authors attempt to capture the interest of the business man while using a style which will bring the writer due prestige among his teaching fellows. Dr. Dameron has unwittingly fallen into this difficult way. He has not entirely satisfied his fellow students because in addition to presenting the results of his own excellent and thorough research work, he has felt the necessity of presenting a well-rounded picture of the entire marketing process as it relates to the men's wear trade. The result has been the repetition and adaptation of material already available in other sources.

At the same time, he has not satisfied the business man, particularly the retailer, who is not accustomed to buying business books, particularly at $6 a copy, and who could not be persuaded to read through a documented volume of five hundred odd pages with the hope that he might find something of value to him in the operation of his business.

There are many writers who are much greater offenders in this respect than the author of *Men's Wear Merchandising*, but when all students of business realize that they too must take the consumers point of view and prepare their finding with the consumer always in mind, they will tend to prepare (1) short scholarly monographs presenting their own research work, and/or (2) equally short, clearly written books directed to the needs of a particular type of business man operating a particular type of business.

W. L. WHITE.

The University of Texas.

Fisher, R. A., *The General Theory of Natural Selection.* (Oxford and New York: Oxford Clarendon Press, 1930, pp. xiv 272.)

The present work, described by its eminent author as "an attempt to deal with the theory of Natural Selection on its own merits," is a notable contribution to the study of evolution and of eugenics. The initial chapters deal with the nature of inheritance, the fundamental theorem of natural selection, the evolution of dominance, variation as determined by mutation and selection, sexual reproduction and sexual selection, and mimicry. The closing chapters, while closely related to the first seven, are devoted to the causes and consequences of differential fertility in man.

Fisher points out that, with the substitution of the particulate for the blending theory of inheritance, it is unnecessary to assume that hypothetical physiological mechanisms control the rate of mutations and direct the course of evolution. Rather, natural selection dominates the trend of evolution. That nearly all inheritance is Mendelian follows from the smallness of the amount of variability in pure lines.

The later chapters rest upon the premise that the most powerful selective agency in civilized man "is that acting upon the mental and moral qualities by way of the birth rate." Intra-communal selection sets up as a result of the introduction of property arrangements and occupational differentiation. In insect societies where the community is formed from the offspring of a single individual the selection problem is avoided. In primitive human societies the net fertility of the upper classes exceeds that of the lower, for socially approved qualities are harnessed with fertility. In civilized society fertility is lowest in the prosperous classes.

How explain this, asks Fisher, if the rate of reproduction is greatly influenced by "the innate and heritable disposition?" In all grades of modern society the economic situation favours the promotion of the less fertile. As a result our upper classes, who are marked by the qualities essential for progress and by intelligence, have also been selected for relative infertility. Only in light of this theory of the selective effect of infertility can all the available data be consistently interpreted.

Having reasoned that the decline of barbarian peoples "is intelligible by the promotion and extinction of their more capable members," Fisher suggests that our civilization can be preserved only by so modifying the wage system that infertility will not make for social promotion and that the more fertile strains will be favored. Such a policy can check the declining birth rate and, possibly, eliminite the less fertile strains in the upper classes. Incidentally, Fisher rejects Spencer's theory and suggests that long civilized peoples (eg. Jews) are, as a result of selection, less susceptible to the social factors making for a decline in the birth rate.

JOSEPH J. SPENGLER.

Ohio State University.

Mower, Edmund C., *International Government.* (Boston: D. C. Heath and Company, 1931, pp. xix, 736.)

Now that international government as a field of study and teaching has become somewhat well-defined in scope and content and firmly established in the curricula of the better grade of colleges and universities it must perforce suffer a flood of text books. This has advantages and disadvantages both to itself and to the text writers. To the field it is an advantage to have the basis material presented in organized and convenient form; but the tendency to "rush into print" before opinions or institutions have sufficiently crystallized has distinct demerits especially when the product is largely a rehash of secondary sources. To the authors it is of course an advantage in some respects to be among the pioneers; for then the latest book, regardless of its intrinsic merits, is almost sure to have marked advantages over previous texts; on the other hand, rapid changes in emphasis and even in institutions make the latest text out of date almost as soon as it is published.

In the present instance the author has sought, with some success, to guard his book against some, but not all, of these mishaps. He sticks rather closely to fundamentals and accepted notions, institutions, and procedure. Furthermore, he seeks to present a general picture of international government instead of emphasizing unduly certain striking events and institutions. In short, out of the maze of theories, organizations, institutions, etc., he finds, at least in tendencies, something like a coherent structure. To picture this structure he presents, first, the underlying bases and factors, second, the diplomatic intercourse of state, third, the international executive, administrative, legislative, and judicial functions, and finally, a more detailed study of the League, the World Court, and the Labor Organization.

Merely to indicate these major divisions is to suggest that the execution has not matched the conception of the plan. For that, the overwhelming interest attaching to the institutions created since the war is largely to blame in this as in previous texts on this subject. It is likely still impossible to get a proper perspective. Furthermore, it is to be doubted if the author has sufficiently explained the factors that are rapidly making the so-called modern state system in some respects an impotent anachronism. Finally, the too-liberal use of secondary sources in the face of a wealth of primary material may be no grave fault in a text intended for under-graduates. The book is, on the whole, a useful, fairly readable survey of the topics that are generally presented in a semester course on the subject.

CHARLES A. TIMM.

The University of Texas.

Thomas, Norman, *America's Way Out.* (New York: The Macmillan Company, 1931, pp. 324.)

Admitting that the American Socialist Movement has sadly deteriorated in both enthusiasm and numbers, Norman Thomas, in *America's Way Out*, seeks to construct a general program that might serve as a political philosophy for a great "left" party in the United States. He hopes that this new reform party, accepting the main tenets of Socialism, may eventually come to power, and that it will then enact legislation to regenerate the society of this country chiefly through the reformation of the careless capitalist system.

Thomas's thesis is not original, nor was it so intended. It represents his reactions to the multitudinous public questions of the present. Though unmistakably academic in tone, the book is clear and understandable. And though the professional Socialists may criticise it for its body of generalizations, the general mass readers will scarcely assume the same attitude. To me, its most apparent weakness lies in its unprovoked and unnecessary docility; it lacks the verve and zeal that should accompany evangelical and educative purpose. The author is an intellectual, erudite and indefatigable, with a passion for reform, but he has the trait of not wishing to aid people against their consent!

On the whole, the work is an admirable thesis of a remarkable student of public affairs. Any political party should be proud of a leader who possesses so full an understanding of social and economic America. Moreover, Thomas has aided materially in lifting American Socialism out of its utopianism. He writes constructively, with the practical always in the fore. With that purpose in view, he refuses to outline a detailed plan for governmental

reform. He lists only the ideological objectives. Most important of all is that the people shall have the facts and the courage to make decisions when the proper time arrives.

In regard to international relations, the author does not nearly approximate the Sidney Webb contention of world economy and international responsibility, yet he supports the traditional Socialist principle of world brotherhood. And though this latter concept may be vague, it, nevertheless, is sufficiently idealistic to gather much support in a society that distracts itself trying to realize world peace.

The most important contribution that Thomas has made to Socialist philosophy lies in his insistence that consumers' coöperatives offer more promise than do producers' organization in effecting an amelioration of the major defects of capitalism. His suggestion, that the chain stores might be utilized as a nucleus for consumer's coöperative organization, deserves serious attention.

In all, I have little except sincere commendation for *America's Way Out.* In fact, I believe it to be one of the two most important works on American Socialism that have been produced since the turn of the century. It is challenging, scholarly, tolerant, comprehensive; it lacks only the will to convince.

CORTEZ A. M. EWING.

University of Oklahoma.

Carpio, Campio, *El Mundo Agonizante.* (Buenos Aires: L. J. Rosso, 1929, pp. 89.)

Comallonga, Jose, *Sovietismo y Solidarismo.* (Habana: Rambla, Bouza y Ca., 1928, pp. 63.)

Estenger, Rafael, *Mussolina y la Ideología Fascista.* (Santiago de Cuba: Arroyo Hermanos, 1930, pp. 46.)

Three essays in social idealism are these. Campio Carpio's volume finds the world the victim of militarism, of a machine economy, and exploited by capitalism and imperialism. The state is now but a tool of oppression. The remedy is to be found in a social order which places private property at the service of human society, thus reversing the present order. It is not possible in a few words to reveal the scope of this little volume by a self-educated shepherd boy from Spain, now an immigrant 28 years old in Argentina, but it summarizes the criticisms of our social order, the pessimism and the hopes of educated workers in Latin America better than any other book I know.

The professor of rural economy in the University of Havana, Dr. Comallonga, writes for the workers of the sugar industry of Cuba. He accepts private property and rejects communism as a social system. But he also would place a larger share of the proceeds of industry at the service of the workers through social organization (solidarity). Wages are not enough for the worker; he must share in the profits, and this may be done, says the writer, through a National Association of the Sugar Industry, a plan for which he outlines. Estenger, on the other hand, has no general solution for the ills of mankind or for any particular class. He tells interestingly the story of Mussolini and of his establishment of Fascism. It is an excellent analysis. He attributes Mussolini's ideas to Sorel and Nietzsche, whom he read constantly. "Fascism is merely the philosophy of Nietzsche put into

action." While it is completely antithetic to communism, it aims at the welfare of the masses through forced compliance with an almost puritanical program. Its weak point is that it relies permanently on force. Men will submit to a loss of freedom in a crisis, but sooner or later they will reclaim their liberty.

L. L. BERNARD.

Washington University.

Huston, Wendell, *Social Welfare Laws of the Forty-Eight States.* (Des Moines: Wendell Huston Company, 1930.)

This compilation will be of great service to all social workers and persons desiring quick reference in regard to this type of legislation. It should prove valuable to legislators needing a ready guide to the methods of the various states in framing proper laws for the care and safe-guarding of their citizens.

The work is accurate and is carefully done, and the index by states is a happy method of making available a ready access to the material. The selection of laws is intelligent, and, while necessarily every law that the title suggests cannot be included, none are found which the reader feels should have been left out.

Since each state varies so greatly in its organization of welfare work, a compiler must follow the method of the state and cannot use any iron-clad rule of uniformity in making available the laws as a whole. Considering this handicap the preparation of the indices and the listing of the laws presents doubtless the best technique possible, though there is difficulty in making a quick comparison.

Needless to state, a work of this kind cannot be used as a substitute for the statutes by a student, who will certainly not be disappointed when he finds that such is the case but for the purposes for which the book was clearly designed, it is an addition to be welcomed.

The growth and development of welfare work in the United States and the increasing interest in it and knowledge of it is such that constant change and amplification of the laws must be expected for many years. The compiler has wisely provided for this by his use of the loose leaf system and supplement service. In consequence the book will continue to increase in value and will doubtless become indispensable to many of the great army of social workers.

CHARLES W. PIPKIN.

Louisiana State University.

Beard, Charles A. and William., *The American Leviathan: The Republic in the Machine Age.* (New York: The Macmillan Company, 1930, pp. xv, 824.)

As the subtitle indicates, here is a book that attempts to show how the national government works under the influence of modern technology. It is an entertaining picture of government as a great functioning process. One is almost prepared to say that it gives us at last a study of government as something alive and not as a deadly array of uninteresting facts. It pictures government in the machine age, yet at no time do the authors get lost in the complex of details of the governmental machine.

The reviewer frankly confesses that he felt the refreshing influence of this volume after having suffered for long in the dry desert of ordered and numbered, but dead, facts and details found in the ordinary text and heard many times over, droned out in 1, 2, 3 order to hard-writing but unthinking and uninspired sophomores who have no call to think but only to memorize the instructor's detailed analyses of the mechanistic side of government. In view thereof we may well be pardoned for waxing enthusiastic about this book. Who does not welcome the oasis after thirsting in the Sahara?

Indeed, it is perhaps not too much to say that the book points the way to the future teaching of government. After all, of what importance are the mechanics of governments unless they are shown in their true relation to the lives of peoples? Therein lies the great virtue of this book, and, for that matter, of the senior author's *American Government and Politics*, a more formal text in the field. There is, in reality, some basis for the charge that the teaching of government is too formalistic, too prone to emphasize description of machinery. This volume should help to rescue it from that terrific indictment.

CHARLES A. TIMM.

The University of Texas.

BOOK NOTES

Mexican Labor in the United States, Dimmit County, Winter Garden District, South Texas (Berkeley University of California Press) by Paul S. Taylor, is another one of the studies appearing at frequent intervals which are aimed at giving us a better understanding of the "stranger in our midst," the Mexican immigrant. The study is, so far as it goes, very thorough. The first section is devoted to giving the background, climatic, historical, and economic, of the group studied. The second section deals with the labor situation. Historically the demand has been first for cowboys and shepherds primarily. In putting the land under cultivation, there was a great demand for "grubbers." The demand at present is largely for laborers in the different crops. The supply is found largely among the Mexican Peon immigrants both citizens of the state and those coming across the Border. Some interesting sidelights upon the activities of the Border Patrol and the resulting attitudes of the Mexican and American farmers are given. One of the most interesting features of the study is the collection of naïve economic ideas expressed by farmer employers. The statements deal with such subjects as the effect of cheap labor upon the introduction of machines, upon the general industrial life, and upon the younger members of the superior group. The writer discusses at some length, the socio-economic ladder as it exists in the district, and the feelings and attitudes lying behind it. The study closes with several pages of interesting field notes, quite long and comprehensive statements from representatives of different viewpoints on all questions relating to the Mexican in the county. The monograph is accompanied by a large map of the county showing the number of Mexican scholastics. The study is interesting and the reader gets rather a clear idea of the human elements which make up the situation. There is, however, a feeling of incompleteness when one closes the book. Many details remain

in the mind, but it seems to the reviewer that some summation of the findings would be valuable, that we shall not err, as did Harriet Martineau's visitor to England in his views of watermen. R. A. A.

Everett E. Edwards' *A Bibliography of the History of Agriculture in the United States;* United States Department of Agriculture, Miscellaneous Publication No. 84; (Washington; Government Printing Office, November, 1930.) is an amplification of a brief list of references prepared in the fall of 1927 for use in a course on the history of agriculture in the United States, taught in the graduate school of the United States Department of Agriculture. A few publications issued prior to 1900 and subsequent to 1929 are given, but only the literature published between these dates has been carefully searched. The citations are made in conformity with the governmental policy of giving descriptions and elucidations rather than critical evaluations. Altogether the author has made 4,273 entries. The references are classified according to the type of the material, histories, bulletins and monographs, periodical contributions, government documents and general writings of various sorts. Also, classification is made on the basis of the different phases of agriculture which are dealt with, and the political and geographical areas to which they apply. With this well worked out system of cross classifications, the publication is a handy reference for students of practically any phase of agriculture as well as persons interested academically in the development of America's largest single industry. In addition to the excellent internal organization of the bulletin, a complete index is made for all citations both by authors and subjects. This publication will be especially welcomed by all colleges of agriculture, research workers in agricultural subjects, and by small libraries which do not have adequate reference facilities to make the literature readily accessible to their readers. It is a highly useful piece of work. O. D. D.

Public Welfare Administration in Louisiana, published by the University of Chicago Press (1930, pp. xvii, 239), by Elizabeth Wisner is one of the Social Service Monographs sponsored by the Graduate School of Social Service Administration of the University of Chicago and under the editorship of Professor Sophonisba P. Breckinridge. Public social services have presented many problems in governmental administration, and although much progress has been made in solving these along scientific lines much yet remains to be settled, especially in the South where public social work has had a rather tardy development. Being a local problem primarily, this work has varied considerably from locality to locality. In the peculiarity of her institutional development in this field, Louisiana presents a contrast with her sister Southern states; and it is in analyzing and explaining this particular development that Dr. Wisner has made her contribution. Preceding her detailed study of the care of the sick poor, the insane, and the adult offender (the major part of public welfare activity in Louisiana) by a description of "Sources of the Law and Public Administration in Louisiana," the author concludes her discussion by a consideration of central state control over public and private institutions and an examination of present-day problems in their historical aspects. As the author points out (Introduction, p. xvii), it is hoped that this historical study, which covers only a part,

but a major part, of this important field of government regulation, will be followed by others of a similar nature. J. A. B.

Stuart A. Queen, former Professor of Sociology at the University of Kansas and now with the Detroit Community Fund, and Ernest B. Harper, Professor of Sociology at Kalamazoo College set for themselves a unique task when they undertook to bring out a new edition of Amos G. Warner's *American Charities* under the title, *American Charities and Social Work* (New York: Thomas Y. Crowell Company, 1930, pp. xiv, 616). Warner's book first appeared in 1894 and the original text has been followed by the authors of the present edition instead of the revised text of Mrs. Mary Roberts Coolidge, which appeared in 1908 and 1919. The book in its present form consists of three parts, much of Warner's material being retained and incorporated in Part II. The other parts contain new matter dealing with developments in the social work field since Professor Warner wrote the original book, which became a classic in its field. Professor Queen contributes Part I, which is designed to give "an historical perspective," and Part III, which deals with every phase of present-day social work, is the product of the joint efforts of Professors Queen and Harper. In its present form the work is a most valuable contribution to the growing literature in the field of social work. Here, for the first time in a single volume, the reader has before him "both a graphic picture of the present situation and something of its background." W. E. G.

Arthur DeWitt Frank's *The Development of the Federal Program of Flood Control on the Mississippi River* (New York: Columbia University Press, 1930, pp. 269) presents a concise and interesting picture of the evolution and expansion of the program of the federal government with reference to flood control on our great inland river, the most "colossal system of internal improvement" yet undertaken. In this book, which is well written and thoroughly documented, the author traces from the rather timid beginnings of a century ago to the significant Jones-Reid Act of 1928 the part played by the national government in combating the challenge laid down by one of nature's greatest forces. The book, however, is more than a mere description of successive acts of the national Congress. From its pages one may learn much in the story of federal-state-local relations—the inevitability eventually of national control as problems, formerly considered local in character, become national in scope and demand a national solution. Leaving aside the technical questions of engineering, the author treats of such important topics as the arguments for and against federal control, the numerous plans proposed, and, especially interesting, the forces that have created sentiment for federal control. A good bibliography containing the many congressional reports upon this subject is given. For those who are interested in general in the expanding scope of federal activity, this book will be instructive. J. A. B.

George E. G. Catlin's *A Study of the Principles of Politics* (New York: Macmillan, 1930, pp. 469) is a continuation of the same author's *Science and Method of Politics*. The two taken together represent an extremely ambitious attempt to provide a basis for a scientific study of human life in

politically organized society. Politics, Professor Catlin believes, should be defined "in terms of an activity, that of establishing control." He further believes that at the present time the approach to the study of this science should be from the angle of psychology and statistics rather than from that of "history, metaphysics, and theology." This appropriate method means, he says, a revival of the "political tradition of Machiavelli, Hobbes, d'Holbach, and Bentham." Unfortunately the book does not measure up to this high ambition. It contains evidence of extraordinary erudition and it is valuable for its many references to studies philosophic, psychological, and historical, but, in spite of the author's profession of faith in measurement and objective analysis, he sets forth no applicable method for dealing with political problems which may be approached in that manner. Indeed it would seem that the method which he actually follows is that of the library rather than that of the laboratory. B. F. W.

Two recently published volumes from The Macmillan Company are Charles A. Beard's *American Government and Politics*, which here enters its sixth edition, and William Bennett Munro's *The Government of the United States*, which has been revised twice before and reprinted several times. Dr. Beard has rearranged the material in his book and has rewritten it entirely, omitting several chapters well known from previous editions and introducing a number of new ones. The result is that the functions of government are given more space and attention than before, while questions of structure and organization occupy a relatively less important position. The book, in short, has been *Leviathanized*. The revision has been thorough and complete, not to say drastic, but those familiar with earlier editions of the book will recognize in the present volume a work which rests on the same foundations as its predecessors. Professor Munro likewise has rearranged the chapters in his book, adding three new ones, and has rewritten his material in large part. He has, however, made no effort to shift the emphasis which he places on the problems with which he deals, nor to reveal any change in his point of view. His new revision therefore follows more closely previous editions of the book than does Beard's. Both authors have brought their books down to date in the matter of detail, and thus have made them available for the use of students who must have an up-to-the-minute treatment of the subject. R. C. M.

Davidson, Craig, *Voluntary Chain Stores*. (New York: Harper and Brothers, 1930, pp. viii, 353.) The term "Voluntary Chains" has grown to cover what are still known as contract wholesalers and coöperative retail buying associations. The title of Mr. Davidson's book is misleading, in that it gives slight attention to the latter type of organization. But as a student of contract wholesalers, he has accomplished his end by writing a business book for business men interested in either organizing or joining one of these new social organisms. He wastes little time on the theory of these coöperative organizations, their position in the trade, their past and future. He prefers to consider practical problems such as organization, pricing, buying, and delivery. Coöperating retailers, he points out, should realize that their voluntary chain depends upon more than group buying and advertising. He insists that keen, intelligent leadership is necessary and that loyalty must

follow requisites that are sadly lacking at present. He concludes that voluntary chains should develop more individuality, should concentrate upon retail services, should increase their advertising, should expand their coöperative business to include fruits, vegetables, creamery products, and meats, and finally should exercise tighter control over their members.

W. L. W.

In some respects *Fugitive Papers* (New York: Columbia University Press, 1930) by Russell Gordon Smith is a remarkable book, but perhaps not so remarkable as a reading of the Foreword by Professor Franklin H. Giddings would lead one to expect. During the last years of his life, Mr. Smith was Assistant Professor of Sociology in Columbia University. After his death this little volume of 119 pages, containing eleven talks delivered to his classes, is published by his friends in loving remembrance and dedicated "to those students of Columbia College who came into contact with him." As a teacher, this young man, in a brief span of years, displayed marks of genius and endeared himself to his colleagues and to hundreds of students. Throughout the pages of the book there is revealed an unusual personality. Flashing humor, tender emotion, frank cynicism in the discussion of a number of social questions indicate much of the character of the man, his keen intellect, and deep spirituality. The volume is a human document worth reading and re-reading. W. E. G.

In writing a detailed history of constitutional developments in the United States, Dr. Jacques Lambert in his *Histoire Constitutionnelle de l'Union Americaine* (Paris: Recueil Sirey, 1930, Vol. I.), has made accessible to French readers in general, much information which has hitherto been accessible in France only to the few. Although this study covers ground familiar to American scholars, it is none the less a very useful contribution to the international understanding which must be achieved, and that soon, in order that mankind may face the future with hope rather than despair. Dr. Lambert has travelled in the United States, has discussed his work with many scholars here, and has done much reading; all of which facts make his study far superior to the average book written by a European about the United States. It could be wished that he had employed more primary sources; but at least he has taken great pains to investigate his subject from many different points of view. This and the future volumes which will continue the study, should be widely read in France, and should be on the shelves of every first-class library throughout the world. M. E. O.

Ten Years of World Coöperation (Secretariat of the League of Nations, 1930, pp. ix, 467), with a foreword by Sir Eric Drummond, the Secretary General, is a valuable survey of the work of the League of Nations over a period of ten years and thus serves in a way as a volume commemorative of the completion of the first decade of the life of the League. It is the work of the staff of the Secretarist and, in consequence, bears the stamp of the semi-official, being a good compilation of facts without critical evaluation. An apparent defect is the lack of a good description of the organization of the League and auxiliary bodies. One chapter deals with the Court, but the Labor Organization is given no special treatment since it has its own secretariat and publications. The bibliographical annexes are useful,

as is the index. Without doubt the book is the best descriptive material yet published by the League regarding its own activities and is superior to any similar material coming from non-official sources. C. T.

Master of Manhattaan, The Life of Richard Croker (New York: Longmans, Green and Co., 1931, pp. vii. 279), by Lathrop Stoddard is a well done and decidedly interesting life of the Tammany boss of the "Gay Nineties" and of Al Smith's young manhood. Croker is carried from his birth in Ireland, through his early "rough and tumble" life in New York, his early failure in politics, his becoming the "big boss," and his bitter fights with Senator Platt, to his final retirement in Ireland. The author has presented an excellent character study, a good description of the Tammany of Croker's day, and an entirely readable political biography. O. D. W.

Andrew Wallace Crandall in his *The Early History of the Republican Party* (Boston: Richard G. Badger, Publisher; The Gorham Press, 1930, pp. 313) has made a scholarly contribution to American party history. The beginnings of the Republican Party are traced up to and including the national election of 1856. The treatment is apparently quite thorough and much new material is introduced from original sources. A full bibliography is appended. O. D. W.

F. Melian Stawell's *The Growth of International Thought* (New York: Henry Holt and Company, The Home University Library, 1930, pp. 248) is a useful survey of the development of international thought from the time of the Greeks to the twentieth century. Among the writers stressed are Dante, Marsiglio, Dubois, Machiavelli, Sully, Grotius, Penn, Rosseau, Burke, and Kant. O. D. W.

Proponents of Limited Monarchy in Sixteenth Century France: Francis Hotman and Jean Bodin (New York: Columbia University Press, 1931, pp. 210) consists of six chapters dealing largely with the works of the two writers, contrasting their thought, and fitting them into the French constitutional movement which had its beginnings in the Middle Ages and continuously sought to place restrictions upon a growing autocracy.

O. D. W.

The 1928 Campaign, an Analysis (New York: Richard R. Smith, Inc., 1931, pp. xii, 183) by Roy V. Peel and Thomas C. Donnelly is a careful description of the pre-convention campaign, the two conventions, and the campaign organizations behind Hoover and Smith, together with the tactics, strategy, and the part played by the personalities of the two candidates. Useful maps, tables, and biblography add to the value of the book.

O. D. W.

The Law of Martial Rule (Chicago: Callaghan and Company, 1930, pp. viii, 257), by Charles Fairman, is based upon a careful, thorough examination of the law and practice of martial rule, chiefly as found in a long line of British and American laws and precedents. The author is to be commended for his scholarly care and thoroughness, for his perfect balance of judgment, and for a style marked to an eminent degree by compactness and lucidity. C. T.